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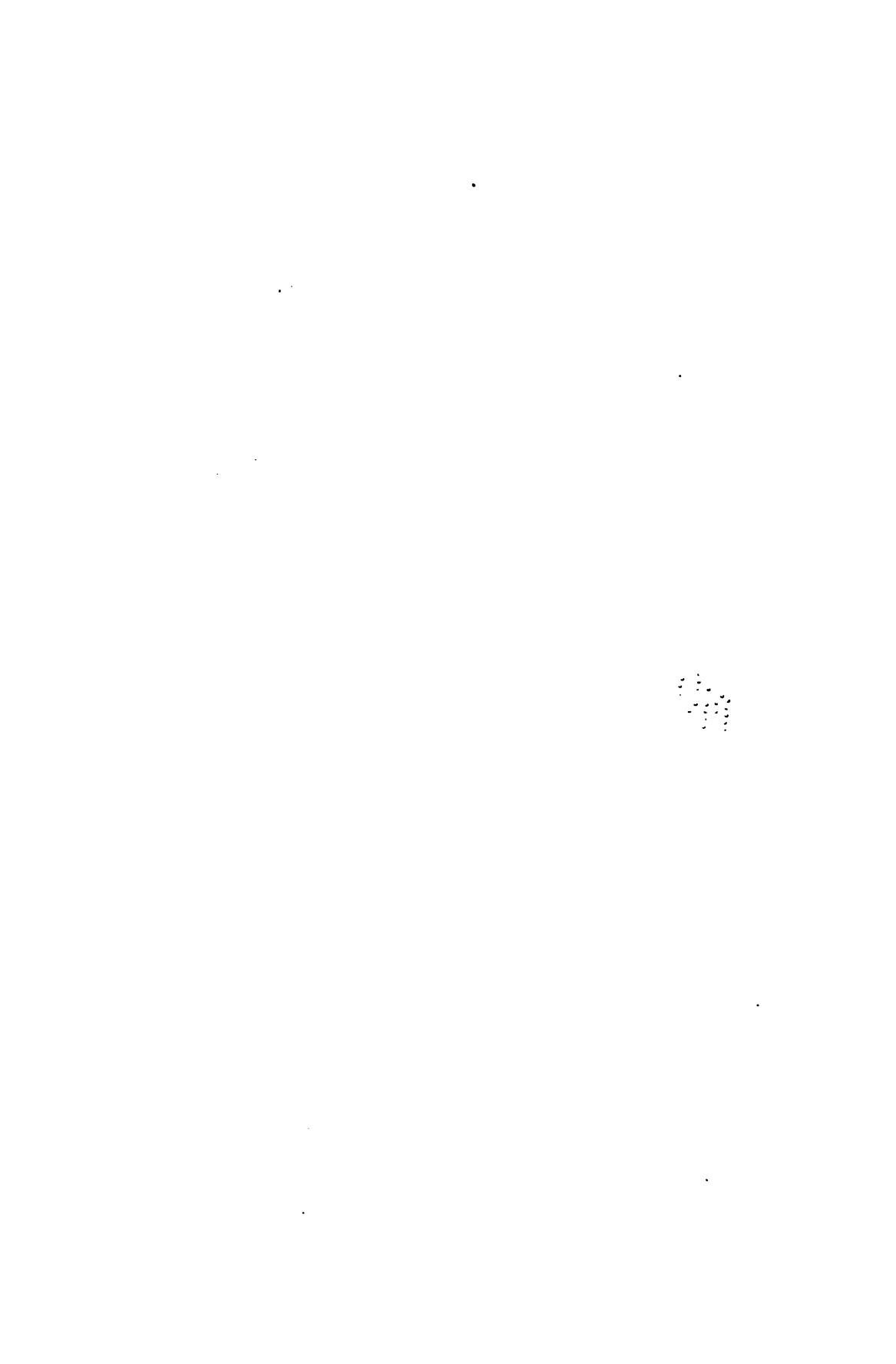
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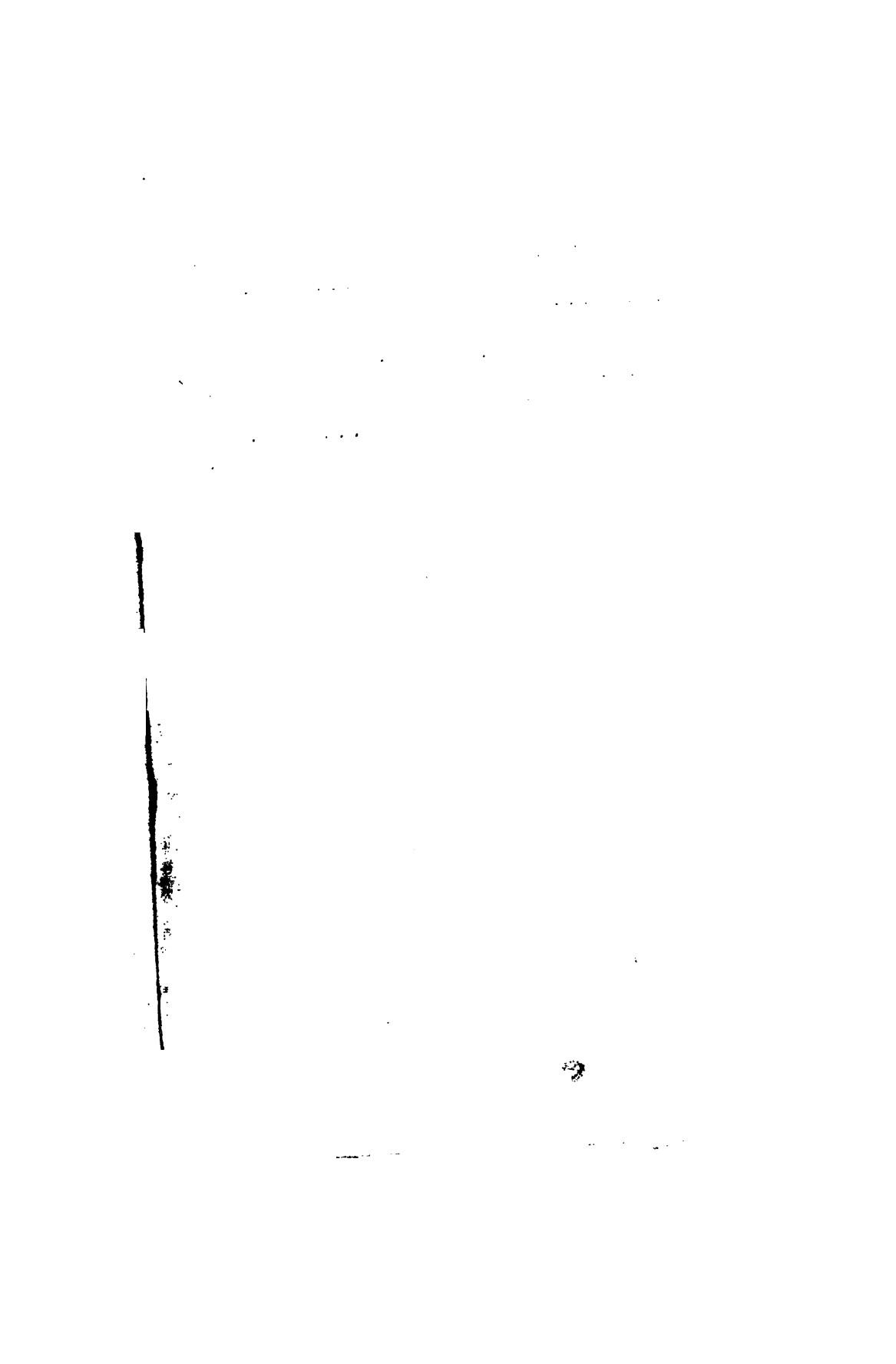
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Miscellaneous tracts

- Blackstone, Sir W. A summary of the constitutional laws of England...1796. —
- Dallas, A.J. ...An exposition of the causes and character of the late war with Great Britain. 1815.
- Andrewes, G.P. Plain directions to every class of persons for making returns under the property-tax acts...1814.



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SUMMARY
OF THE
Constitutional Laws
OF England,
BEING
AN ABRIDGEMENT
OF
BLACKSTONE'S COMMENTARIES.

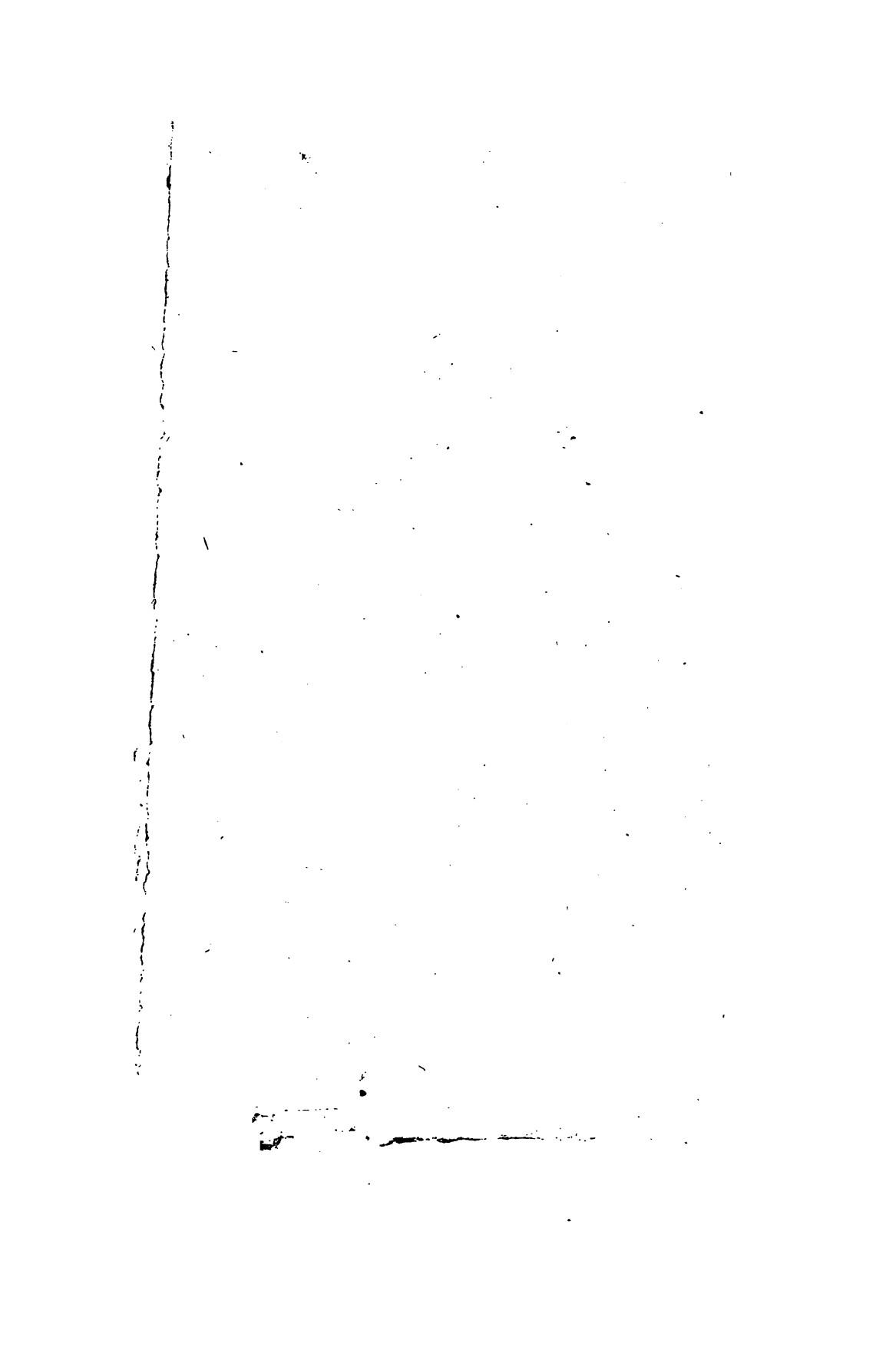
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AN
A B R I D G M E N T
O F
Blackstone's Commentaries,

BOOK I.

Introduction, and on the Rights of the People.

Chap. First.

ON THE COMMON AND STATUTE LAW.

THAT a knowledge of the laws of that society in which we live, is a proper accomplishment for a gentleman, is too evident to be denied, every man being interested, in the laws of the kingdom where he resides, particularly gentlemen who have property as well as character to lose; and ignorance of those laws is never admitted as a legal excuse for the breach of them. I shall endeavour, therefore, to make the general reader acquainted with such as more immediately concern him, omitting those only which it is the province of a lawyer to understand.

Now these laws may be divided into two kinds, *Common Law*, and *Statute Law*. *Common Law* includes not only *general Customs*, but also those *particular ones* observed only in certain jurisdictions. The *Statute Law* consists of the various acts of parliament made from time to time.

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Common Law then, may be considered as of three
 1. General Customs; 2. Particular ones; and 3.
 peculiar Laws, observed only in certain jurisdictions.

I. By general customs it is, that proceedings are governed by the common courts of justice, both with respect to persons and offences. It is by custom in common law, that the son inherits from his father; that property may be purveyed by writings; that a deed is void, if not sealed and delivered; that money, lent upon a bond, is recoverable by action; and, that a breach of the peace is punishable by fine and imprisonment. These are doctrines not established by parliament or any written law, but depend on immemorial usage.

The validity of these doctrines is determinable by judges, whose knowledge in the matter arises from their experience; and it is an invariable rule, where a decision has once been made on any point, to determine it in the same way again, unless the precedent can be proved erroneous, the judges being sworn to determine, not according to the private opinion, but the known laws and customs of the realm.

II. The second branch of the common law are particular customs, such as affect only particular districts; as those of counties, cities, manors, and the like. But such customs must be proved to have existed time immemorial, to have continued without any legal interruption, and must at the same time be reasonable, certain, compulsory and consistent.

With respect to *uninterrupted continuance*; if the inhabitants of a village have a right to pass through certain church lands, the right is not lost, even though it should have discontinued for ten years; but if the right be legally interrupted or discontinued for one day, the custom is destroyed.

So a custom must be *reasonable*. That no man shall turn his cattle upon a common, till the Lord of the manor has turned his on, cannot hold good, because the Lord may turn his on; in which case the tenants would lose their rights.

So it must also be *certain*, that is fixed: for example, to pay one shilling in lieu of tithes is good, but to pay for one shilling, and sometimes two, is bad, because uncertain. It must likewise be *compulsory*, that is, not left to the option of every man; and it must, further, be *consistent*, that custom must not clash with another. If I have a window looking into another's garden; the other cannot have a right to obstruct it.

III. The third branch are those peculiar laws, used in certain courts, and jurisdictions, as the Civil and Canon law.

By the *Civil Law* is meant the law of the civil courts: by the *Canon Law*, that of the ecclesiastical courts.

Statutes or acts of parliament, are either *public* or *private*. A public act affects the whole community; private acts operate only on particular persons.

The common and statute law then is the ground-work of the laws of this country; though the court of equity is sometimes applied to moderate and explain them. Now these laws extend throughout England, Wales and the Isle of Wight: The Isle of Man has laws of its own; so have the islands of Jersey, Guernsey, Sark and Alderney, but an appeal lies from them to the Privy Council. The main sea, however, is considered as part of the realm of England.

Chap. Second.

ON THE DIVISION OF ENGLAND.

ENGLAND may be considered as in two divisions, *Ecclesiastical* and *Civil*.

I. The ecclesiastical consists of two provinces, Canterbury and York. The See of Canterbury has jurisdiction over twenty-one suffragan dioceses; the remaining three, viz. Carlisle, Chester and Durham, with the bishopric of Man, are subject to York.

Each diocese or bishopric is divided into archdeaconries, of which there are sixty; and every archdeaconry is divided into parishes.

The boundaries of parishes of which there are about ten thousand, were originally marked agreeable to the manor or manors in which they stood. Lords of manors built churches on their waste grounds for the accommodation of their tenants, and obliged those tenants to appropriate their tithes to the support of one officiating minister (nominated by them, but approved of by the bishop) which before were distributed at large among the clergy of the diocese, and this district or tract of land, where the tithes were so appropriated, became a parish. If a Lord had a parcel of land lying remote from the body of his estate, not sufficient to form a parish of itself, he endowed his church with the tithes of those out-lying lands, and hence it is that parishes are frequently intermixed with each other. Such lands as are now extra-parochial, were either situated in desert places, or being in the possession of careless or irreligious owners, were wholly unattended to.

II. The Civil division of the kingdom is into counties ; of counties into hundreds, and of hundreds into tithings or towns ; so called because *ten* freeholders with their families composed a tithing, and ten tithings were called a hundred, because it consisted of ten times ten families. One of the chief inhabitants annually appointed to preside over the rest, was called a *tithing-man*.

A city is a town incorporated, which is, or hath been, the fee of a bishop, as that of Westminster. A borough is a town that sends members to parliament, whether it be incorporated or not.

Each hundred is governed by a high constable or bailiff. In the northern counties, hundreds are called *wapentakes*. An indefinite number of hundreds form a county or shire ; though in some counties, there is an intermediate division between shires and hundreds, as *lathes* in Kent, and *rapes* in Sussex, each containing three or four hundreds. In England there are forty counties ; in Wales, twelve.

Three of these counties are called counties palatine, viz. Chester, Durham and Lancaster, from a *palatio*, because the owners, the Earl of Chester, Bishop of Durham and Duke of Lancaster had royal rights there, as extensive as the King had in his palace, such as a power to pardon and appoint judges. Of these three, the only one remaining in the hands of a subject is Durham ; Chester and Lancaster being united to the crown.

The Isle of Ely is indeed a royal franchise, the bishop having, by a grant from Hen. I. regal rights within the island ; of course, jurisdiction over all causes, criminal and civil.

There are also certain cities and towns, that are counties of themselves, with more or less territories annexed, not comprised in any other county ; but are governed, by favour of different kings, by their own sheriffs and magistrates, as London, York, Bristol, Norwich, and some others.

Chap. Third.

OF THE RIGHTS OF PERSONS.

THE principal objects of the Civil Law of this country are *rights* and *wrongs* : Rights are those of *persons* and *things*. We will speak first of the rights of persons.

The rights of persons are of two kinds, absolute and relative ; such as belong to individuals, and such as appertain to men as members of society.

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The absolute rights of men are three, *personal security*; *personal liberty*, and *private property*.

Personal security consists in the uninterrupted enjoyment of life, health and character; and whoever shall take away or injure either, is liable to punishment.

Personal liberty is held so valuable, that it can never be abridged, but by permission of the laws. Forcibly detaining a man in the street is considered as imprisoning him; and the natural consequence of this personal liberty is, that no Englishman, can be driven from his country, unless by sentence of the law; and with respect to his property, the law will not authorise the violation of it, even for the general good. The legislature does occasionally oblige owners of land to sell it, for the benefit of making public roads and canals; but these exertions of power are used with great caution, and the person so obliged to sell, is paid the full value of it. A man is not even obliged to pay a tax, but such as is imposed by his own consent or that of his representatives in parliament.

To protect these rights the constitution of this country has established, 1. A parliament. 2. The King's prerogative. 3. Courts of justice. 4. The right of petitioning the King or parliament, and 5. That of having arms for our defence under certain restrictions.

Chap. Fourth.
OF THE PARLIAMENT.

WE will now speak of the parliament, and under this head shall consider the relative rights of men as members of Society.

In all despotic governments, the supreme magistracy or power of making and enforcing laws, is vested in one man or one body of men; and where these two are united, there can be no public liberty; but where the legislative and executive authorities are in different, distinct hands, as in England; the former will take care not to entrust the latter with such powers as may tend to destroy its own independency.

The British constitution is neither an aristocracy, that is, where the government is in the hands of the nobles; a democracy, where it is in the hands of the people; nor a monarchy, where it is solely in the crown; but, it is a mixture of the whole, having the perfections of all, without the imperfections of either: for the executive power, or the power of enforcing the laws being lodged in a single person, for example

ample in the king, the laws have all the advantages of strength and dispatch to be found in the most absolute monarchy; where the king is supreme; and the legislature being entrusted to three distinct powers, totally independent of each other, viz. King, Lords and Commons; the Lords being an aristocratical assembly of persons, selected for their piety, their wisdom, their valour and their property; and the Commons, being a kind of democracy chosen by the people from among themselves; a body actuated by different springs and attentive to different interests; no inconvenience is to be dreaded from either: each power having a negative voice, sufficient to repel any inexpedient or dangerous innovation.

The executive power then in our constitution, is the King alone, who, of course, is supreme magistrate; but the legislative authority, or the power of making laws, consists of King, Lords and Commons, and is the parliament of Great-Britain.

It being part of the royal prerogative that no parliament can be called together, but by the king's authority; his writ or summons for this purpose is issued forty days before it begins to sit. On the death of the king, if there be no parliament in being, the last parliament, re-assembles and sits again for six months, unless dissolved by the succeeding King. If prorogued only, it assembles immediately. But as the King only can convene a parliament, that law obliges him to call one within three years after the dissolution of the former.

Now the constituent parts of a parliament are the King, Lords and Commons; and as an act must have the concurrence of these three branches, before it passes into a law; let us consider these branches separately. The first is the King, but of this we will speak hereafter; the next is the house of Peers, which consists of the Lords spiritual and temporal.

The spiritual Lords are the two Archbishops and twenty four bishops; the temporal Lords are Dukes, Marquises, Earls, Viscounts and Barons, whose number may be increased at the will of the King. Sixteen of these Peers are chosen by, and sit as the representatives of, the Peers of Scotland; the rest hold their seats by descent or creation.

The Commons of England consist of all such men of property throughout the kingdom, as have not seats in the house of lords, every one of whom has a vote in parliament; but as the people of England are too numerous to assemble in any one place, certain districts choose their representatives, who meet in parliament and vote for them. The counties are represented by Knights, elected by the freeholders or men of landed property; the cities and boroughs, by Citizens and Burgesses,

Burgesses, chosen by the mercantile part of the people. The house of commons consists of five hundred and fifty eight members, forty five of whom are chosen in Scotland and represent the people of that kingdom ; the rest represent the people of England.

The power of this parliament is so great as to have been called Omnipotent. It can new-model the succession to the throne ; alter the established religion of the land ; change, as it pleases, the constitution of the country ; and what the parliament doth, no authority can undo.

The privileges of parliament are also very large, they having power to adopt what privileges they please. The members are free from arrests in civil cases, and to assault a member of either house, or any of his servants, is a high contempt, and punished with great severity.

The house of Peers is attended by the Judges and Masters in Chancery, for their advice in law-matters. Every Peer, can, with the King's leave, appoint in his absence, another Lord of Parliament to vote for him. This is called voting by proxy. Members of the other house cannot do this, they being only proxies themselves. Each peer also has a right, by leave of the house, to enter on the journals his dissent or protest against any determination passing contrary to his sentiments.

Acts or bills that any way affect the rights of the peerage are to originate in the house of Peers, and to undergo no change or alteration in the house of commons. And it being an ancient liberty of the people not to have their property taken from them without their own consent, all grants of taxes for the exigencies of government, originate in the house of Commons; but as the Lords pay a proportion of the taxes, if they think the Commons too lavish, they can reject them altogether, but cannot make the least alteration in such bills sent up for their concurrence.

Knights of the shire, or members for the county, are chosen by the freeholders of that county. Every man having a freehold estate of forty shillings value per year, is entitled to vote for such members ; and the freemen of borough towns choose the members for those boroughs. As trade fluctuates from town to town, it was formerly left to the King to summon such towns as flourish most, to send representatives ; so that the citizens or burgesses in parliament increased as trade increased, or as towns became populous ; but the mischief is, the deserted towns continue to be summoned equally with those to which the trade and inhabitants were removed ; ex-

A Summary of the

cept some few, who petitioned to be eas'd of the expence of sending members to parliament ; the pay of a knight of the shire being then four shillings a day ; that of a burgess, two shillings. Hence it is that the number of members, which in the reign of Hen. VI. amounted only to three hundred, are now five hundred and fifty eight.

It is not every man that is qualified to be chosen into parliament. They must not be minors, or foreigners born ; they must not be any of the twelve judges, these sitting in the house of lords ; nor of the clergy, these sitting in convolution ; they must not be sheriffs of the counties they are chosen for, nor mayors nor bailiffs of boroughs, these being the returning-officers ; nor must they be concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury ; nor any of the commissioners of prizes, transports, sick and wounded, wine-licences, navy and victualling office, nor secretaries or receivers of prizes, comptrollers of army-accounts, agents for regiments, governors of plantations or their deputies, officers of Gibraltar, excise or customs, clerks or deputies in the treasury, exchequer, navy, victualling, admiralty, pay of the army or navy, secretary of state's office, salt, stamps, appeals, wine-licences, hackney coaches, any contractors with government, nor any persons that hold any new office under the crown created since 1705, or person having a pension under the crown during pleasure, or for any term of years, are capable of being elected or sitting. And any member accepting an office under the crown, (except an officer in the army or navy accepting a new commission,) vacates his seat, but he may be re-chosen. Representatives of counties must have a clear estate in land to the value of £ 600. a year, and those of boroughs to the value of £ 300. except they are the eldest sons of Peers and of persons qualified for knights of the shire, and except the members for the two universities ; and of this qualification the member must make oath and give in the particulars in writing when he takes his seat.

And as freedom of election is essential to the very being of parliament, all undue influence upon the electors is illegal. Lest the crown should be supposed to interfere, all persons belonging to the excise lose their votes, and all soldiers quartered in any place where the election is held, are to remove before the election ; nay it is forbidden for a peer or lord-lieutenant to interfere ; and to avoid all danger of bribery, no candidate must give any money or entertainment to the electors, either directly or indirectly, on pain of incapacity to

to serve for that place in parliament, Nay, the sheriff or returning officer swears that he is not bribed, and the electors, if required, are obliged to swear to their qualifications, and that they have not been bribed to give their votes.

The method of doing business is much the same in both houses. Each house has its speaker. The Lord Chancellor or Lord Keeper is generally speaker of the upper house, who regulates the formalities of business: the speaker of the lower house is chosen by the members, but must be approved of by the King. The speaker of the house of commons cannot give his opinion on any subject before the house, but the speaker of the house of lords, if a lord of parliament, may. In both houses, a majority of voices binds the whole, and this majority is given publicly and openly.

When an act of parliament of a private nature is wished for, a petition is first presented by some member, which, if founded on facts, that may be or are disputed, it is referred to a committee of members to examine the matter, and then, (or on the petition itself if not opposed) leave is given to bring in a bill. If the matter is of a public nature, the bill is admitted on a motion made to the house by any member and seconded, even without a petition. This done, it is read a first time, and some little time after, a second; after each reading, the speaker acquainting the house with the substance of the bill, puts it to the vote, whether or not it shall proceed any further; if it is not objected to, after the second reading, it is referred to a committee, which in matters of small importance is selected by the house; or else the house resolves itself into a committee of the whole body, which is composed of every member; in which case the speaker quits the chair (another chairman being appointed), and may give his opinion as a private member. In such committee the bill is discussed, clause by clause, and amendments, if any, are made. When it has gone through this discussion, it is then re-considered and the opinion of the house is taken upon every clause and amendment. This done, it is ordered to be engrossed or written on parchment; after this, it is read a third time. The speaker then opens the contents of the bill again, and holding it up in his hands, takes the sense of the house, whether the bill shall pass? If agreed to, it is carried to the Lords for their concurrence, where it passes through similar forms, and if agreed to by them, it waits the royal assent; if rejected, no notice is taken of it, to prevent improper altercations. If the Lords make any amendment to it, it is sent down again to the Commons for their concurrence.

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Should the Commons object to the amendment, a conference is held between members deputed by each house, to adjust the difference. Where both parties remain inflexible, the bill is dropped.

There are two ways of giving the royal assent. In person and by commission. When in person, the King goes to the house of lords, puts on his crown and robes, (the peers being also robed) and sending for the house of commons, the titles of all the bills that have passed or obtained the concurrence of both houses are read, and the King's assent or dissent is declared by the clerk of parliament. When done by commission, it is notified to both-houses by certain commissioners appointed for that purpose. A bill thus receiving the royal assent becomes an act of parliament.

The only thing further to be mentioned respecting the parliament, is their manner of Adjournment, Prorogation, and Dissolution.

Adjournment is a discontinuance of sitting from one day to another, during the session, as from Friday to Tuesday, or during the holidays, and is an act of the house itself; but they sometimes adjourn at the pleasure of the King, who, otherwise, on a refusal, could prorogue them; prorogation being a discontinuance of their sitting from one session to another, and is an act of the Crown. Prorogation puts an end to the session, and then all bills begun and not completed, must, if wished for, be resumed anew in a subsequent session; whereas, after adjournments, things are again taken up in the state in which they were left before adjournment.

A Dissolution is the ending of any parliament, and may happen three ways. 1. By the will of the King; for if parliaments could continue themselves, they might exist for ever, and thus too far encroach on the executive power. 2. By the death of the King; or 3. By length of time, that is at the expiration of seven years, for long parliaments might become corrupt: besides, as the house of commons is formed by the people, a change of men may produce a change of measures.

Chap. Fifth. OF THE KING, &c.

BY the general consent of the people, the supreme executive power is vested in the crown; the authority then of this power shall next be considered, and in the following order:

order: 1. The title of the King; 2. His family; 3. His councils; 4. His duty; 5. His prerogative; and, 6. His revenue.

I. The crown or right of succession is, by custom, hereditary; but the right of inheritance is subject to be changed or limited by act of parliament; under which limitations the crown still continues hereditary. That is, it is descendible to the next heir, male or female: but this hereditary right implies not a divine right; it is unquestionably in the breast of the legislature to defeat this hereditary right, exclude the immediate heir, and vest the inheritance in any one else; but, however limited or transferred, it still becomes hereditable in the wearer. Hence it is, that the king is said never to die; but on the death of Henry or William, the King survives in the successor.

II. The queen-regent is the reigning queen in default of male issue, and has the same powers, prerogatives, &c. as if she had been a king. But the queen-consort or the wife of the King has less powers, &c. She has, however, many privileges superior to other married women.

The queen-consort is a public person, distinct from the King, and like an unmarried woman, can purchase lands, make leases, &c. without the concurrence of her lord; she can also take a grant from her husband, which no other wife can. Common Law has established this to prevent the King's being troubled with his wife's concerns.

The queen hath some exemptions also; but in general she is on the same footing with other subjects, being to all intents and purposes the King's subject.

The person, however, of the queen, is equally protected with that of the King. It is high-treason to plot against her life; and it is also high-treason to violate the queen-consort, as well in the violator as in the queen herself, if consenting; and if a queen be tried, it must be by the peers of parliament: but the case is different in the husband of a queen-regent, who, though her subject, and may commit treason against her, is not guilty of treason for conjugal infidelity; because infidelity of the husband to a queen-regent cannot bastardize the heirs to the crown.

A king's widow is entitled to most of the privileges she enjoyed as queen-consort, except that it is not high-treason to conspire her death, or to violate her chastity, the succession of the crown being not thereby endangered: yet still, for the royal dignity, none can marry a queen-dowager, without the king's consent, under the penalty of forfeiting his lands and effects. But she, though a foreigner, after the king's death

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A Summary of the

shall have dower, which no other foreigner has. If married to a subject, she does not lose her privileges, as do dowager peeresses, when married to commoners.

The prince of Wales and his wife, and the princess-royal also have some peculiar privileges; it is high-treason to conspire the death of the former or violate the chastity of either of the latter. More regard is had to the princess-royal than her sisters, she being alone inheritable to the crown, on failure of male issue.

By the *royal family* is understood the younger sons and daughters of the king and other of the king's relations, not immediately in the line of succession. These have precedence before all peers and officers of state, whether ecclesiastical or temporal. The education of the presumptive heir to the crown is now held to be under the care of the King; and by a late act, no descendant of the body of King George II. (except the issue of princesses married into foreign families) can marry without the King's consent, unless they are twenty-five years old; nor even then, without twelve months' notice being given to the privy council, or if in the course of those twelve months both houses of parliament express their disapprobation of the match. A marriage otherwise entered into will be void, and the minister and all persons present incur the penalties of a *præmunire*.

III. Of the King's councils the principal one is the privy council. The number of members are indefinite, and at the pleasure of the King; but they must be natural-born subjects. They sit during the life of the King who nominates them, subject however to removal at his discretion; but, at the death of the King, they continue for six months, unless dissolved by the successor.

A privy counsellor takes an oath to advise the King without partiality, affection, or dread; to keep his counsel secret; to avoid corruption; to assist the execution of what is there resolved; to withstand all who oppose it, and to do all that a good counsellor ought to do. He is empowered to enquire into all offences against government, and commit the offenders to take their trial in some court of law.

The privy council is a court of appeal in plantation and admiralty causes, which arise out of the jurisdiction of the kingdom; and in matters of lunacy and idiocy. Its judicial authority is exercised by the whole body, who examine into the matter and make their report to his Majesty in council, by whom judgment is given.

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The privileges of a privy counsellor are certain protections of his person. It is felony in any of the servants of the King's household to conspire against his life; and felony without clergy to unlawfully assault or attempt to kill him in the execution of his office.

IV. With respect to the King's duty, I need only observe, that in his coronation oath, he *lwears* "to govern according to the statutes; to cause law and justice, in mercy, to be executed in all his judgments; to maintain the laws of God, the true profession of the gospel and the protestant reformed religion; to preserve unto the clergy, and to the church, all such rights and privileges as do or shall appertain unto any of them."

V. Now for his prerogative, namely, that pre-eminence which the crown hath, above all other persons, and out of the common course of the law.

Prerogatives are either *direct* or *incidental*: *direct*, are those inherent in his political person, such as the right of sending ambassadors, of creating peers, and of making war and peace. *Incidental* prerogatives are only exceptions, in favour of the crown, to those general laws established for the good of the people: such as, that the King shall pay no costs; that a debt to the crown shall take place of any debt to the subject; &c. These shall be explained hereafter. At present, we will consider the *direct* prerogatives, which may be divided into three; such as relate to the *character* of the King, to his *authority*, and his *revenue*.

1. The law ascribes to the King *sovereignty*. He is declared to be the supreme head both of the church and state, and accountable to none. Hence it is, that no suit or action can be brought against him even in civil matters; because no court can have any jurisdiction over him: if any one has a demand on the King in point of property, he petitions the court of Chancery, where his chancellor will administer right as a matter of grace, not of compulsion: hence it is also, that however tyrannical and arbitrary may be the measures of the people, by law, the King's person is sacred; no jurisdiction on earth having power to try him, much less to punish him: but, as the King cannot well misuse his power without the advice of evil ministers, these men may be impeached, and punished.

2. The law also ascribes to the King, in his political capacity, absolute *perfection*. It is an established maxim that "the King can do no wrong." Which implies two things:

1. That whatever misconduct there is in public affairs, the King

A Summary of the

King is not personally answerable for it ; and, 2. That his prerogative being created for the good of the people, cannot be exerted to their prejudice.

But, notwithstanding this conceived perfection, the constitution has allowed both houses of parliament to suppose the contrary, either having a right to remonstrate and complain to the King, even of those acts of royalty that are personally his own ; such as messages signed by himself, and speeches from the throne ; yet to preserve a reverence to the crown, such messages or speeches are deemed to flow from the advice of administration.

3. A third attribute ascribed to the King is *perpetuity*. In his political capacity, the King can never die ; for instantly on the death of the reigning prince, the crown or royal dignity is vested in his heir. Hence the death of the prince is called the *demise*, or transfer of the crown.

Secondly, Let us speak of the King's *authority* or power.

The King is sole magistrate of the nation, every other acting under him by commission. In the exercise of his lawful prerogative he is absolute. He may reject any bill he pleases, make any treaty, create any peers, and pardon any offences, except such where the constitution has interfered ; but, if the exertion of this prerogative be extended to the injury or dishonour of the nation, the parliament have a right to, and will, call his advisers to account.

As far as the prerogative respects foreign nations, the King is the representative of his people ; what is done by his authority is the act of the nation ; what is done without the King's concurrence is but the act of individuals : a subject's committing acts of hostility, therefore, on any nation in league with the King, is severely punishable.

1. Sending and receiving ambassadors is a power vested solely in the King ; and as such ambassadors represent the persons of their sovereigns, who owe no subjection to any laws but their own ; the actions of an ambassador are not subject to the controul of the private law of the state where he resides. If he commits any crime, he may be sent home and accused before his master, who is bound either to do justice upon him, or stand forth the accomplice of his crimes. But if an ambassador conspires the death of the King in whose country he is, he may be condemned and executed for it.

In civil causes, neither the ambassador, nor any of his train, can be prosecuted for any debt or contract in that kingdom where he is sent to reside ; except he is a trader within the description of the bankrupt laws.

2. Making

2. Making of treaties, leagues, and alliances with foreign powers is also vested in the King. And likewise,

3. The sole power of making war and peace.

4. And of granting safe conducts: no subject of a nation at war with us, can come into the realm, nor pass upon the seas, nor send his property from place to place, without danger of being seized by us, unless he has a passport signed by the King, or his ambassadors abroad.

In domestic matters, the King has a variety of other prerogatives, as,

1. He is one part of the legislative power, and has the power of rejecting bills in parliament: nor is he bound by any statute, unless he be particularly named therein; except an act be made for the preservation of public rights and suppression of public wrongs, and does not interfere with the established right of the crown; but, though not named in any particular act, he may, if he pleases, take the benefit of such act.

2. The King is considered as the head of the army, and has the sole power of raising and regulating the fleets and armies. This power extends also to forts and other strong places within the realm. He is likewise invested with the power of appointing ports and havens. He may also prohibit the exportation of arms or ammunition, and may confine his subjects within the realm, or recall them when beyond the seas, on pain of fine and imprisonment when they return; because, all men are bound to defend the King and the nation.

3. The King is also considered as the distributor of justice and the general preserver of peace. He therefore has the sole right of erecting courts of judicature. Hence it is, that all proceedings run in the King's name, and are executed by his officers.

In criminal proceedings, all offences are against the King, for the public being an invisible body, and he their visible representative, all affronts to that body are offences against him; he is therefore the proper person to prosecute; and, of course, to pardon.

4. The King is also the fountain of honour, office, and privileges. All degrees of titles are by his immediate grant. All honourable offices under the crown are in his appointment, and he has also the power of conferring privileges.

5. He is also considered as the arbiter of domestic commerce: has the power of establishing markets and fairs, and specifying their tolls; of regulating weights and measures; and of coining, and giving value, and currency to, money.

6. The

6. The King is, lastly, considered as the head of the church, and as such he convenes, prorogues, restrains, and dissolves the houses of convocation, which are a parliament in miniature; the archbishop of Canterbury presiding with regal state; the upper house, consisting of the bishops, and representing the House of Lords; the lower house, composed of representatives chosen by the several archdeaconries and chapters, and resembling the House of Commons.

As head of the church, arises the King's right of nomination to vacant bishoprics and other clerical preferments, and to him is the last appeal in chancery in all ecclesiastical causes.

VI. The last thing to be treated of under the present head, is the revenue of the King, which is of two kinds, *ordinary* and *extraordinary*. The ordinary revenue is that which has subsisted in the crown time immemorial; or else has been granted by parliament in exchange for such hereditary revenues as were found inconvenient to the public.

Parts of this ordinary revenue have been granted by different Kings to the public use, which has made the crown in some measure dependent on the people for its support.

1. The first branch of this revenue is the custody of the temporalities, or those lay lands and tenements which belong to the fees of bishops. These, on the vacancy of the see, are the property of the King, till a successor is appointed; but, by customary indulgence, this revenue is reduced to nothing; for now, as soon as the new bishop is confirmed, he receives from the King, on paying homage, the temporalities of his see, untouched.

2. The King is further entitled to the first-fruits and tenths of all spiritual preferments. The first-fruits were the whole profits of the first year, according to a rate settled in 1292. The tenths were a tenth part of the annual income of each living, by the same valuation. In the reign of Henry VIII. it was annexed to the crown, and that valuation made, by which the clergy are now rated. All benefices however under 50*l.* clear yearly value are, by statutes of Queen Anne, discharged of the payment of first-fruits and tenths, and what the crown receives, by her bounty, is vested in trustees for ever, as a perpetual fund for the augmentation of poor livings.

3. The third branch of the revenue consists of the rent and profits of the demesne lands of the crown, that share of land reserved to the crown by the original distribution of landed property, or such as it afterwards acquired by forfeitures:

feitures : these are divers manors and lordships, many of which have been since granted away to private persons.

4. The King had also a revenue arising from military tenures, and from purveyance and pre-emption, which was a power of buying up provisions for his household, at one appointed valuation, in preference to others, and even without the owner's consent ; Charles II. resigned these claims, for which the parliament settled on him, and his successors, fifteen pence a barrel on all beer and ale sold in the kingdom, and a proportionate sum on other liquors, as will be mentioned by-and-by.

5. A fifth revenue arising from wine licences was settled on the crown in the 12th of Charles II. but this was abolished under George II. and 7000l. a year issuing out of the same duties was given instead.

6. A sixth branch arises from certain fines imposed upon offenders in the courts of justice, by forfeitures of recognizances ; fines upon defaulters, and from certain fees due to the crown in a variety of legal matters ; such as putting the great seal to charters, writs, &c. but these have been almost all granted out to private persons, or appropriated to particular uses, so that very little of them comes into the exchequer.

7. The next branch of the King's revenue arises from property confiscated.

A deodand is another kind of forfeiture, arising from the misfortune of the owner rather than his crime, and is that personal property, whatever it be, which occasions the death of a rational creature : as if a horse, an ox, or other animal, kill either an infant or an adult ; or if a cart run over him, they are in either case forfeited, as a punishment for the negligence of the driver.

8. An eighth branch arises from escheats of lands, owing to a defect of inheritance, that is, where there is no heir to the estate, it falls to the King.

9. The last branch consists in the custody of idiots, or those born without the use of reason. The care of these unhappy persons and their estates, is given to the King, to prevent a waste of the estate, to the injury of the next heir. This branch of the revenue has been long considered as a hardship on private families ; but as the King cannot take the estate, till a jury of twelve men has found the owner an idiot from his birth, it seldom happens, that they consider him as such, but as a lunatic, or *non compos mentis* from some particular time.

A person is never deemed an idiot, that hath any glimmerings of reason. But a man born deaf, dumb, and blind is considered as an idiot, wanting those senses that furnish the mind with ideas.

There

There are some other things from which the King formerly derived a revenue, such as extra-parochial tithes, ship-wreck, gold and silver mines, treasure-trove, waifs, estrays, that is, things found, and stray cattle; but as they are now lost to the crown, I have not particularized them.

I have now run through the particular branches of the King's *ordinary* revenue, which was formerly very large, and capable of enormous extent; but as, through a series of impolitic conduct, these are come to nothing; to supply the deficiencies, we are obliged to have recourse to new methods of raising money, in which the King's *extraordinary* revenue consists. These extraordinaries are called aids, subsidies, and supplies, and are the various taxes levied by parliament; the neat produce of which amounts annually to about ten millions, clear of all expence, which is chiefly appropriated to pay the interest of the national debt.

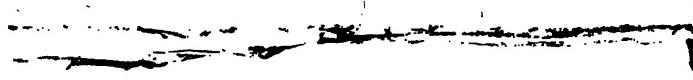
This debt has, from time to time, accumulated since the Revolution, from the great expences the nation has been put to, more than its revenues could discharge. Hence the legislative power were obliged to borrow large sums of money upon the faith of the nation, for which they now pay interest. The principal amounts to near 300 millions, the annual interest of which, is upwards of nine millions, and although the taxes raised to support this expence are very uncertain, depending upon contingencies, such as exports, imports, and home consumptions, they have always been considerably more than sufficient to answer the charge upon them. A million is now reserved for the purpose of paying off the debt, which if it remains untouched, will by compound interest do it in little more than sixty years; but, if the debt is at any time increased by wars, it will be longer first. The surplus is called the *sinking fund*, being designed to sink the national debt, by paying off, from time to time, such portions of it, as this fund is capable of doing.

Besides the interest of the national debt, a clear annuity of 900,000l. is appropriated to the purposes of the civil list, that is, to support the King and his household. The army and navy is an expence apart.

Chap. Sixth.

OF SUBORDINATE MAGISTRATES.

HAVING considered the great executive magistrate, we come now to subordinate ones; I mean such as have jurisdiction and authority in different parts of the kingdom,
viz.



viz. sheriffs, coroners, justices of the peace, constables, surveyors of highways, and overseers of the poor: and first, for the sheriff.

1. The sheriff was formerly chosen by the inhabitants of the county, as those of Middlesex are by the city. In some they were hereditary, as at present in Westmoreland; but the custom now is, that all the judges and other great officers meet on the morrow of St. Martin, and propose three persons to the King, one of whom he afterwards appoints to be sheriff. They are to continue in office only one year; and are not compellable to serve again for three years after.

The sheriff is, in his official character, a judge, a keeper of the peace, a ministerial officer of the upper courts of justice, and the King's bailiff.

He decides elections of knights of the shire (subject to the controul of the House of Commons) of coroners and verderors; he judges of the qualifications of voters, and returns such knights as he shall think properly elected.

As keeper of the peace, he ranks before any man in the county. He may commit to prison all persons breaking the peace, or attempting it, and may bind any one over to keep it. He is bound to pursue, apprehend, and commit all criminals: he is also, in invasions, to defend his county against the enemy, and for this purpose he may raise the *posse comitatus*, that is, he may command the people of his county to attend him; and every person above fifteen years of age, and under the degree of a peer, is bound to obey his summons, on pain of fine and imprisonment; but he cannot try any criminal offence, nor can he, during his office, act as a justice of the peace.

As a ministerial officer of the upper courts of justice, he is bound to execute all their processses. In civil caules, he, or his substitutes, serves the writ, arrests, and takes bail, summons and returns the jury, and sees the judgment of the court carried into execution. In matters criminal, he also arrests and imprisons, returns the jury, has custody of the criminal, and executes the sentence of the court, even in cases of death.

As king's bailiff, he is to preserve the King's rights within his county; to seize to the King's use all lands devolved to the crown by attainder or escheat; levy all fines and forfeitures; seize and keep all waifs, estrays, wrecks, and the like, unless granted to some private persons; and, if commanded by process from the Exchequer, must collect also the King's rents within his county.

For the execution of these various offices, he has under him many inferior officers; an under-sheriff, bailiffs, and gaolers.

It

It is the business of the under-sheriff to perform all the duties of the office of sheriff, a very few only excepted, where the personal presence of the high-sheriff is requisite.

Bailiffs, are either bailiffs of hundreds or special bailiffs. Bailiffs of hundreds are appointed by the sheriff over certain districts called hundreds, to collect fines, summon juries, attend the judges and justices at assizes and quarter-sessions, and serve writs and processes in the several hundreds; but as these, for the most part, are plain, artless men, and not sufficiently skilled in serving writs and executions, special bailiffs are usually joined with them, men who, from low cunning and dexterity, are better adapted to this part of their office; but the sheriff being responsible for their conduct, they give security for their trust.

Sheriffs are also answerable for the conduct of gaolers. The gaoler's business is to keep in safety all who are committed to his custody, and if he suffers any such to escape, if it be a criminal matter, the sheriff shall answer to the King; if a civil, to the party injured. For this reason the sheriff is always chosen from men of property, that he may be able to make satisfaction.

2. The coroner derives his name from having to do chiefly in pleas of the crown, and is chosen by the freeholders. In every county of England there are more or less, usually four, but sometimes six, and sometimes fewer.

The coroner is chosen for life, but may be removed on being made sheriff or verderor, which offices are incompatible with the other; infirmities, sickness, want of sufficient estate, living in an inconvenient part of the county, extortion, neglect, and misbehaviour, are all causes of removal; and, if he conceals a felony, not doing his duty, through favour to the misdoers, he shall be imprisoned a year, and be fined at the King's pleasure, that is, at the pleasure of the court.

His office is, to enquire into the manner of the death of any one who is killed, dies suddenly, or in prison; but this must be on an inspection of the body. For if the body be not found, the coroner cannot sit. He must sit also in the very place where the death happened; and his enquiry is made by a jury from any of the neighbouring towns over whom he presides. If by this inquest any is found guilty of murder, he is to commit the offender to prison for the trial, and also to make enquiry concerning his lands, goods, and chattels, which are forfeited thereby: and must certify the whole of the business to the court of King's Bench, or the next assizes.

3. The next order of subordinate magistrates are justices of

of the peace; the chief of whom is the *Custos Rotulorum*, or keeper of the county records.

These justices are nominated by the Lord Chancellor, or by the lord lieutenants of the several counties, and are appointed by the King. They are jointly and severally empowered to keep the peace; and any two or more, may examine into and determine felonies and other misdemeanors. The qualification for a justice of the peace is one hundred pounds a year, of which he must make oath; and if he acts without such qualification, he forfeits one hundred pounds. No practising attorney, solicitor, or proctor, is capable of acting as a justice of the peace.

Justices are removable at the King's pleasure, and their office is determinable in six months after the death of the prince.

4. Of the officers of lower rank, the first is the constable. There are high constables and petty constables. The former preside over the hundreds, are appointed by the justices at their quarter-sessions, and are removable by the same authority. Petty constables are inferior officers in every parish, and subordinate to the high constable. They are appointed by two justices.

The duty of a constable, either high or petty, is to keep the peace; and for this purpose he has power to arrest, imprison, break open houses, and the like. He may appoint watchmen at his discretion, regulated by the custom of the place; who, being his deputies, are armed with his power. He has also a variety of lesser duties.

5. Every parish is bound to keep the high roads, that go through it, in repair, unless they belong, by tenure or otherwise, to some private persons. Parishes neglecting such repairs, may be indicted for their neglect; and that some persons may see this business done, surveyors of the highways are appointed in every parish, by two neighbouring justices from the substantial inhabitants.

Their duty is to carry into execution the statutes made for the repairs of the public highways. This empowers them to remove all annoyances, or give notice to the owner to remove them, who is liable to penalties on non-compliance: and to call together the inhabitants and occupiers of lands, &c. within the parish, six days in every year, to assist in mending the roads, or pay others to do it.

6. Overseers of the poor are also parish-officers. Till the reign of Hen. VIII, the poor subsisted entirely on private charity; but under Elizabeth, overseers in every parish were appointed,

appointed, who are to be nominated from substantial housekeepers yearly, by two neighbouring justices.

Their duty principally is, to raise competent sums in the parish, for the necessary relief of their own poor; *viz.* the impotent, the old and blind, and such of the poor as are not able to work, and to provide work for such as are able and cannot get employ.

Chap. Seventh. OF THE PEOPLE.

FROM treating of persons, as *magistrates*, we will now consider them as *people*; the first division of which is into aliens and natural-born subjects.

Natural-born subjects are such as are born *within* the dominions of the crown of England, and in allegiance to it. Aliens are such as are born *out of* the King's dominions and allegiance.

Allegiance is that tie that binds the subject to the King, in return for the King's protection. The oath of allegiance, which is, "To be faithful and true to the King," must be taken by all persons in any office, trust, or employ under government, and two justices may tender it to any person whom they suppose disaffected.

But, whether the oath be taken or not, there is an implied allegiance owing from all subjects to their sovereign; so that whether they are in England, or in any other country; and whether they have resided in such other country, twenty days, or twenty years, if born in England, they owe allegiance to the English crown. Hence it is, that Englishmen abroad meet with the protection of our ambassadors.

An alien, living in this country, owes the King allegiance during his continuance here. An alien may purchase lands or other estates; but not for his own use; on pain of forfeiture to the King; for property in this kingdom would claim that allegiance to the crown, which, in fact, he could not pay. Yet, an alien may acquire a property in personal estate, that being of a nature that he may take away with him. Aliens may also trade, as freely as others, subject only to higher duties at the custom-house: they may also recover their personal property at law; may make a will, and dispose of their personal estate. In speaking thus of aliens, I mean such as belong to countries at peace with us; for alien-enemies, during war, have no rights or privileges, but by special favour of the King.

Persons may be born out of the King's dominions, and yet
not

not be aliens; for, all children born abroad, whose fathers (or grandfathers by the father's side) were natural-born subjects, are considered as natural-born subjects themselves; unless their said ancestors were attainted or banished for high-treason; or were, at the birth of such children, in the service of a prince at enmity with Great-Britain: so also are children of aliens, born in England.

An alien born, who has obtained letters patent to make him an English subject, is called a denizen. Such may take lands by purchase or devise, which an alien may not; but cannot take by inheritance; for his parent, through whom he must claim, being an alien, could not convey to his son; neither by parity of reasoning, can the child of a denizen, born before denization, inherit from his father; but a child born after, may. A denizen is not excused from paying alien's duty; to be excused which, the alien must be naturalized by act of parliament; but it is a prerogative of the crown to grant letters of denization.

No man can be naturalized but by an act of parliament; but by such an a& he is put exactly into the situation of a natural-born subject; except that, like a denizen, he cannot be a member of the privy council or parliament, nor can he hold offices, grants, &c. under the crown. No person can be naturalized or restored in blood, except he receive the sacrament, one month before the bill be brought in, and except he take the oaths of allegiance and supremacy, in presence of parliament.

Every foreign seaman, who serves, in time of war, two years on board an English ship, by virtue of the King's proclamation, is naturalized; and all foreign Protestants, being three years employed in the whale fishery, without absenting themselves afterwards from the King's dominions, for more than one year, unless their fathers (or grandfathers by the father's side) were attainted or banished the King's dominions, for high-treason, or were, at the birth of such persons, in the service of a prince at enmity with Great-Britain, shall, upon taking the oaths of allegiance and abjuration, be naturalized to all intents and purposes, as if they had been born in this kingdom.

Chap. Eighth.
OF THE CLERGY.

THREE are two divisions of the people; the clergy and the laity. The clergy have certain privileges allowed them. They cannot be compelled to serve on juries, nor appear

pear at court-leets, which almost all other persons are obliged to do. Neither can they be chosen to any temporal office; as sheriff, bailiff, constable, or the like. In cases of felony, they shall have the benefit of clergy, without being burned in the hand, and may have it more than once, which no layman can. But, they have certain disabilities; they are incapable of sitting in the House of Commons; nor can they engage in any manner of trade.

There are divers ranks and degrees of clergymen, viz. archbishops, bishops, deans, prebendaries, archdeacons, parsons, vicars, and curates.

1. An archbishop or bishop is, by virtue of a licence from the crown, called a *conge d'elire*, elected by the chapter of his cathedral church. This licence is accompanied with a letter containing the person's name the King would have chosen; and if the chapter delay the election above twelve days, the King may nominate and appoint by letters patent. And if such chapter do not elect the person whom the King appoints, they shall in incur all the penalties of a *præmunire*.

An archbishop is the head of the clergy in the whole province, and governs the bishops in such province, as well as the inferior clergy, and may deprive them on lawful causes. The archbishop also has a diocese of his own, where he exercises episcopal jurisdiction, as he does archiepiscopal in his province. On receipt of the King's writ, he calls the bishop and clergy of his province to meet in convocation. To him are all appeals made from inferior jurisdictions within his province; and as an appeal lies to him in person from the bishops in person, so it also lies from the consistory courts of each diocese to his archiepiscopal court. In the vacancy of any bishopric in his province, he is guardian of the spiritualities, and he executes therein all episcopal jurisdiction. If an archbishoprick be vacant, the dean and chapter are the guardians. The archbishop is entitled to present, by lapse, to all livings in the gift of his suffragan bishops, if not disposed of within six months. And when a bishop is consecrated by him, he has a customary privilege of naming a clergyman to be provided for by such consecrated bishop; instead of which, the bishop usually now makes over, by deed, to the archbishop, his executors and assigns, the next presentation of any dignity or benefice in the bishop's disposal, as diocesan, which the archbishop shall choose; which is therefore called his *option*; but such options are not binding on the bishop's successors. If the dignity or benefice does not fall vacant, during that bishop's life

life or continuance in his see, the option is lost. By custom, it is the privilege of the archbishop of Canterbury to crown the kings and queens of England. He is empowered also to grant dispensations to clergymen to hold two livings, and to grant special licences to marry at any place or time. He has also the privilege of conferring degrees.

A bishop, besides the administration of ordination and other holy ordinances, has the authority to inspect the manners of the people and the clergy, and to punish delinquents by ecclesiastical censures. To this end, he has several courts under him, and he may visit at pleasure, every part of his diocese. He appoints a chancellor to hold his courts for him, and to assist him in matters of ecclesiastical law. It is the office also of a bishop, to institute and direct induction to all benefices within his diocese.

Archbishoprics and bishoprics may become void by death, deprivation, or for any very gross or notorious crime, and also by resignation, if the King thinks proper.

2. A dean and chapter are the bishop's council, to assist him with advice, in matters of religion, or in the temporal concerns of his see. Some few of the deans are appointed by the bishops of the diocese, the rest by the King. The chapter consists of canons or prebendaries, some of whom are appointed by the King, some by the bishop, and some elected by the chapter itself. The dean and chapter, being the nominal electors of the bishop, the bishop is their superior, and has the power of correcting their abuses.

Deaneries and prebends may become void also by death, deprivation, or by resignation to the King or bishop. If a dean, prebendary, or other beneficed clergyman be made a bishop, all the preferments he before held are void, and, on his consecration, the King, by his prerogative, has the next turn of presentation to them; let the patron be who he will.

3. An archdeacon hath, subordinate to his diocesan, an ecclesiastical jurisdiction throughout the archdeaconry. He is usually appointed by the bishop, and has a kind of episcopal authority, independent of him. He visits the clergy, and has his separate court for hearing ecclesiastical causes, and punishing offenders by spiritual censures.

4. Another order of men, among the clergy, and indeed the most numerous, are rectors and vicars.

The rector, has, during his life, the freehold in himself of the parsonage house, glebe, tithes, and other dues. But these are sometimes *impropriated*; that is, the benefice is never presented, but perpetually annexed to the patron of the living, whom

whom the law allows to provide for the church by a substitute, called a vicar. This contrivance originated in the policy of monastic orders of men, who, by consent of the King and the bishop, begged and bought all the advowsons within their reach, appropriating the benefices to the use of their own body, and paying a priest some little stipend for serving the church. And at the dissolution of the monasteries, in the reign of Hen. VIII. the appropriations which belonged to those religious houses, were vested in the King, which have been since granted out, from time to time, to private persons.

The officiating minister of these benefices, was in reality no more than a curate or deputy; but, that the church might not be ill served, or the deputy suffer by the mercenary disposition of the appropriator, statutes were made to empower the bishop to ordain a competent sum, to be annually paid him, according to the value of the benefice; and, to oblige the appropriator to endow the vicarage sufficiently; making such vicar perpetual.

To become a rector or vicar, there are four necessary requisites: ordination, presentation, institution, and induction. A man becomes either a deacon or a priest, by ordination. To be a deacon, a man must be between twenty-two and twenty-three years of age, and to be a priest, twenty-four years of age: no man can hold a living till he is ordained a priest, or be a bishop, till he is thirty years of age. Whilst a man is only deacon, he can quit his profession for any other, but not so, when once ordained priest. None can administer the sacrament but a priest; nor, can a deacon preach, without being first licenced by the bishop. If any man obtain orders, or a licence to preach, by money or corrupt practices, the bishop, on conferring such orders, forfeits forty pounds, and the person receiving them, ten pounds, and is incapable of any ecclesiastical perferment for seven years after.

A patron, to whom the advowson of the church belongs, may present any clergyman to the bishop of the diocese, for institution, (or any layman, but he must take priest's orders before his admission,) who may be refused by the bishop on several accounts. As, 1. If the patron be excommunicated. 2d. If the clergyman presented be an outlaw, excommunicated, an alien, under age, guilty of any heresy or gross immorality, or insufficient in point of learning.

If an action be brought against the bishop for refusing to institute the person presented, the bishop must assign the cause, which is tried by a jury; if it be want of learning, he may alledge only insufficiency; and the court of King's Bench will write

write to the metropolitan to re-examine him, and certify his qualifications, and this certificate is final.

Where the bishop does not object, he proceeds to institution, which is investing the priest with the cure of souls. When a vicar is instituted, he takes an oath to reside, unless dispensed with by the bishop; for a vicar cannot have a substitute, being only a substitute himself. By institution, the living is full, and no further presentation can be made, till a fresh vacancy, at least, in the case of a common patron; but, where the King is patron, the living is not deemed full, till after induction; which is performed by a mandate from the bishop, to the archdeacon, who usually issues out a precept to some neighbouring clergyman to do it for him. It is done, by giving the priest possession of the church, as by his holding the ring of the door, tolling the bell, or the like. A clerk thus presented, instituted, and inducted, is in complete possession.

The rights of a rector, or vicar, in his tithes and dues, we shall treat of hereafter; but I will just mention the article of residence, on the supposition of which, the law calls him an incumbent. Persons wilfully absenting themselves from their benefices for one month together, or two months in the year, forfeit five pounds to the King, and five pounds to any person suing for the same, except chaplains to the King, and chaplains to noblemen during their attendance in the households of such as retain them; and, except all heads of colleges, magistrates, and professors in universities, and all students under forty years of age, residing there for study. Legal residence is not only in the parish, but in the parsonage, or vicarage house, if there be one; if not, the incumbent must hire one, in the same, or some neighbouring parish.

Livings may be vacated several ways. As, 1. By death. 2. By cession, in taking another benefice; for, if any one, having a benefice of eight pounds a year or upwards in the King's books, accepts any other, the first is void, unless he obtains a dispensation; which none can have but a master of arts, in one of our universities, who is a chaplain to the King, or some nobleman, or the brother, or son, of a lord or knight, or such as have taken the degree of doctor of divinity, or bachelor of law. 3. By consecration; for, as we before observed, when an incumbent is promoted to a bishopric, all his other preferments are void the instant he is consecrated: though by favour of the crown, he sometimes holds his former preferment *in commendam*; that is, a living commended by the crown, to the care of a clergyman, till a proper pastor

is provided : which may be for a time, or a perpetuity, 4. By resignation. But this is useless, till accepted by the diocesan. 5. By deprivation ; for gross crimes, such as treason, felony, heresy, gross immorality ; simony ; maintaining any doctrine in derogation to the King's supremacy, the thirty-nine articles, or the book of common-prayer ; or, for neglecting, after institution, to read the liturgy and articles in the church, make the declarations against popery, or to take the oath of abjuration ; or, for using any form of prayer but that of the church of England ; or, for absenting himself sixty days in one year, from a benefice belonging to a popish patron, to which the incumbent was presented, by either of the universities ; in all which, and similar cases, the benefice is void, even without any formal sentence of deprivation.

5. A curate is an assistant to the rector, or vicar. Though there are perpetual curacies, where all the tithes are appropriated, and no vicarage endowed, but the curate is appointed by the appropriator, and continues for life under the licensee of the bishop. Bishops may allot such a stipend to a curate, not exceeding fifty pounds a year, nor less than twenty pounds, out of the profits of the living, as he shall judge proper ; and oblige the incumbent to pay it, on pain of having the profits of his benefice sequestrated. The bishop also can license the curate, and oblige the incumbent to continue him as such, whilst he thinks proper to have assistance in his duty.

So much for the clergy. There are also some inferior ecclesiastical officers, of whom the Common Law takes notice, viz. churchwardens, parish-clerks, and sextons.

1. Churchwardens are generally two, and are the guardians of the church, and representatives of the body of parishioners. They are sometimes appointed by the minister, sometimes by the parish, and sometimes by both, each appointing one, as custom directs. They are a kind of body-corporate, in favour of the church, may have a property in goods and chattels, and may bring actions for them : if they waste the church-goods, they may be called to account for so doing ; but, as to land or other real property, such as the church itself, the church-yard, &c. these are the property of the rector. Their duty is to repair the church, and levy rates, for that purpose. They also, with the overseers, have the care and management of the poor. They have also a multitude of other lesser parochial powers, committed to their charge, by acts of parliament.

Parish-clerks and sextons are persons who have freeholds in their

their offices ; and, therefore, though they may be punished by ecclesiastical censures, they cannot be deprived by them.

Formerly, parish-clerks were in holy orders, and some are at this day ; appointing laymen to officiate for them. The clerk is generally appointed by the incumbent, though custom in some places gives the appointment to the parishioners. When appointed, he is sworn in by the archdeacon, and often licensed by the bishop.

Chap. Ninth.

OF THE LAITY.

THE laity may be divided into three distinct states, the civil, military, and maritime. We will begin with the civil.

I. This includes all orders of men, excepting the clergy, and those included under the states military and maritime.

The civil state, then, comprehends the nobility and commonalty.

1. Of the nobility, the peerage consisting of ~~privateers~~; Spiritual and Temporal, we have already treated ; we have only here to consider their titles.

All titles and degrees of honour are derived from the King. Exclusive of those privileges of a peer, which have been before considered ; every peer has, in criminal cases, the privilege of being tried by his peers : and, is thus out of danger from the envy or prejudice of the populace. Bishops are not entitled to this privilege, being only temporary peers. If a woman be a peeress in her own right, though she marry a commoner, she does not lose this privilege : but, if she is noble only by marriage, by a second marriage with a commoner, she does. If a duchess marries a baron, she is still a duchess, for all the nobility are *pares*, and therefore it is no degradation. A peer, or peeress, (either in her own right, or by marriage,) cannot be arrested in civil suits. A peer, sitting in judgment, gives in his verdict, only upon honour. He puts in his answer also to a bill in Chancery, not upon oath, but upon honour ; but, if examined as a witness at a trial, he must be sworn. The honour of a peer, in short, is so highly thought of in law, that scandal against them is called *scandalum magnum*. There are several degrees of

the commonalty, as may be seen in tables of precedence, & where persons are ranged, according to the rank they bear, either by statute, letters-patent, or by antient usage.

II. The military state includes all the land-forces, or the whole of the soldiery.

A national militia is part of this state ; the general scheme of which is, to discipline a certain number of the inhabitants of every county, chosen by lot, for three years, and officered by the lord-lieutenant, the deputy-lieutenants, and other principal land-owners, under a commission from the crown. They cannot be compelled to march out of their own counties, except in cases of invasion, or actual rebellion, within the realm (or any of its dominions) nor in any case can they be forced to march out of the kingdom. In time of peace, they are exercised for one month in the year; in the time of commotion, they are embodied, have the pay of a regular soldier, and are under martial law.

By the Bill of Rights it is declared, that a standing army, within the kingdom, in time of peace, unless it be with consent of parliament, is against law ; but, of late years, it has been judged necessary by our legislature, to raise an army ~~under the command of the crown, which is ipso facto dis-~~ of having at the expiration of every year, unless continued by parliament.

To keep this body of troops in order, an annual act of parliament is likewise passed, to punish mutiny and desertion, &c. This act regulates the manner in which they are to be quartered, and establishes a law martial, for their government.

A weekly allowance is to be raised in every county, for the relief of soldiers that are sick, hurt, and maimed, and the hospital at Chelsea is appropriated to such as are worn out in the service. Officers and soldiers, that have been in the King's service, are by several statutes, enacted at the close of wars, allowed to set up any trade or occupation, in any town in the kingdom, except the two universities. And soldiers, in actual service, may make nuncupative, or verbal wills, and dispose of their wages and effects, without those forms and expences the law enjoins in other cases.

III. The maritime state is very similar to the military. The present condition of our marine is, in a great measure, owing to the navigation acts, whereby English shipping and seamen have been constantly increased. These prevent all ships of

§ *Vide TRUSLER'S CHRONOLOGY, Vol. 2,*
foreign

foreign nations from trading with any English plantation, without licence from the council of state. In 1651, the prohibition was extended to England, and no goods could be imported but in English bottoms, or in ships of that European nation, of which the merchandize imported, was the genuine growth or manufacture. At the restoration this very material improvement was made, that the master and three-fourths of the seamen should be English subjects.

Many statutes have been made to supply the navy with men; to regulate them on board, and reward them during the time of, and after, their service.

1. In order to supply the navy with men, bounties are continually given; but, where bounties are ineffectual, recourse is had to impressing; the legality of which, though it has been a matter of some dispute, is certain.

But there are other means of manning the navy. Parishes may bind out poor boys apprentices to masters of merchantmen, who are protected from being impressed, for the first three years; and, if impressed afterwards, masters shall have their wages. Great advantages are given to volunteer seamen, to induce them to enter into his majesty's service; and, every foreign seaman, who, during a war, shall serve two years on board any ship of war, merchantman, or privateer, *as ipso facto* naturalized.

2. A regular discipline in the fleet is kept up by certain express articles and orders, enforced by act of parliament. In these articles, almost every possible offence is enumerated, and its punishment annexed; an advantage which the soldier does not experience, the articles of war not being enacted by statute, but framed from time to time, at the pleasure of the crown.

3. The privileges of sailors, are much the same with those of soldiers. Greenwich Hospital is appropriated to the relief of those who are maimed, wounded, or superannuated; and, county rates are raised for their support. Seamen have the same privileges with respect to exercising trades, and making verbal or nuncupative wills; and, no seaman aboard the King's ships, can be arrested for a less sum than twenty pounds.

Chap. Tenth.

Of the People, in their Private Relations to each Other.

THE three great relations in private life, are, 1. That of master and servant; 2. husband and wife; 3. parent and child. To which we may add, being a kind of artificial

parentage; 4. That of guardian and ward. We will treat of these in their turns ; and first,

I. Of master and servant. In some countries, servitude is a degree of slavery ; but, the law of England abhors the idea. Insomuch that it is laid down, that a slave or negro, the instant he lands in England, becomes a free man ; that is, the law will protect him in the enjoyment of his person, and his property : but, the master's right to his service remains as before ; service in this sense, being no more than that state of subjection for life, which every apprentice submits to for a term of years.

There are several sorts of servants, the first of which are menial or domestic servants. The agreement between such and their master, arises from hiring. If this hiring be general, without any particular time limited, the laws construe it for a year ; but the agreement may be made for a longer or shorter term. All unmarried men, between twelve and sixty, and married men, under thirty years of age, and all unmarried women, between twelve and forty, having no visible way of living, may be compelled to go out to service, in husbandry, or certain specific trades : and, no master can put away his servant, or any servant leave his master, after being so hired, either before or at the end of his term, without a quarter's warning, unless with the consent of both, or by special agreement, and unless upon reasonable cause to be allowed by a justice of the peace.

A second sort of servants are apprentices, bound usually for a term of years to masters, who are to maintain and instruct them in the busines they follow. With such are often given large sums of money, as premiums : but, apprentices may be bound to husbandmen, to gentlemen, and others. Children of the poor may be apprenticed out by the overseers of the parish to which they belong, and with the consent of two justices, till they are twenty-four years old ; and, such persons as are thought fitting, are compellable to take them ; and it is held, that gentlemen of fortune, and clergymen, are equally liable with others to this compulsion. Apprentices to trades may be discharged on reasonable cause, either at the request of themselves or their masters, at the quarter-sessions, or by one justice, with appeal to the sessions ; who may direct the master to return a proportionable part of the money given with the apprentice, according to the time he has had such apprentice. Parish apprentices may be discharged in like manner, by two justices ; but, if an apprentice, with whom less than ten pounds

pounds apprentice-fee hath been given, runs away from his master, he may be obliged to serve out his time of absence, or make satisfaction for the same, at any time, within seven years after the expiration of his original contract.

A third species of servants are labourers, hired by the day or week : concerning whom the laws, direct that all persons having no visible effects may be compelled to work, specifying the many hours they must continue at work, in summer and winter ; punish such as desert their work ; empower justices at sessions, or the sheriff of the county, to settle their price of work ; and, inflict penalties on such as give or exact for work more wages than what is settled.

A fourth species are stewards, factors, and bailiffs, whom the laws regard, as far as their acts affect their masters property.

A master may by law, correct his apprentice for negligence or misbehaviour ; so as it be done with moderation : but a master or mistres, beating any other servant of full age, is sufficient cause of quitting them. Servants, workmen, or labourers, assaulting their master, or master's wife, shall suffer one year's imprisonment, and other open corporal punishment.

A master may assist his servant in any action at law against a stranger ; whereas, such a step in general is an offence. A master may also prosecute a man for beating his servant ; but, in such case, he must prove a loss to himself. He may also justify an assault in defence of his servant ; so may the servant in defence of his master ; they being interested in the service of each other. If any person hire my servant, knowing him to be mine, and he quits my service accordingly, I can recover damages both against the new master and the servant ; provided such master refuses to restore such servant upon demand.

Masters are answerable for the misconduct of their servants, if such misconduct is owing to the master's command. If a servant commits a trespass by order of his master, not only the master is deemed guilty, but the servant also, he not being bound to obey his master, but in things legal and honest. If an inn-keeper's servant robs the guests, the master is bound to restitution ; because, he should have taken care to have had honest servants. So, if a waiter at a tavern sells a man bad wine, that injures his health, the master must answer for it ; for even suffering the waiter to draw and sell it, implies a command.

By the same way of reasoning, whatever a servant is permitted

mitted to do, in the usual course of his business, is equivalent to general command. If I pay money to a gentleman's servant, who does not usually receive money for his master, and he embezzles it, I must pay it again; but, if I pay it to a banker's clerk, the master is answerable. If a steward lets the lease of a farm, without his master's knowledge, the master must abide by the agreement, this being the steward's business. So a wife, or a friend that transacts business for a man, are considered as his servants in that respect, and he must answer for their conduct. If I usually deal with a tradesman myself, and constantly pay him ready money, I am not responsible for what my servant takes up upon trust; but, if I usually send him upon trust, or sometimes on trust, and sometimes with money, I am answerable for all he takes up, as the tradesman cannot be supposed to know, when he comes by my order, and when upon his own authority.

If a servant, employed by his master, by negligence, does a stranger an injury, the master must make it good. A master is also responsible, if any of his family throw any thing out of his house, into the street or highway, to the injury of any individual, or prove a common nuisance.

But, contrary to Common Law, if any house is set on fire, through the negligence of a servant, the master shall not be answerable for the injury; but, such servant shall forfeit one hundred pounds, to the sufferers; or, shall be committed, and kept to hard labour for eighteen months.

II. The second private relation in life, is, that of husband and wife.

The civil law considers marriage in no other light, than as a civil contract, and, like other contracts, allows it to be good, where the parties are *willing* and *able* to contract, and actually *did*, in the proper form and mode.

All persons are able to contract marriage, that do not labour under certain incapacities: such, as pre-contract; being too near of kin; too nearly related by marriage; or some corporal infirmities. But these are canonical disabilities, and only make the marriage voidable when brought before an ecclesiastical court: till sentence of separation is past, marriages with such incapacities are considered as valid. If a man marries his first wife's sister, and she dies before the matter is taken cognizance of; any children she may have will be legitimate, but the husband may be punished for incest. Any two persons may marry that are not nearer of kin than first cousins.

Legal disabilities, of which the civil courts take notice,
and

and which render the marriage null in itself, are, a prior marriage; want of sufficient age; want of parents or guardians consent; want of reason; and not being solemnized in due form.

1. Where there is a husband or wife living, a second marriage is void of course, and the person so marrying, is guilty of felony. This is called Polygamy.

2. If a boy under fourteen, marries a girl under twelve, the marriage is void; and, though they live together to the age of consent, which is fourteen in the boy, and twelve in the girl, they may separate if they please, without any sentence of the spiritual court: but, if at the age of consent, they agree to continue together, a fresh marriage is unnecessary. If the husband be of years of discretion, and the wife under twelve, either may disagree, and so *vice versa*; for in all contracts, both must be bound or neither.

3. A third disability arises from want of consent of parents or guardians. A fine of one hundred pounds is laid on every clergyman marrying a couple, either without publication of banns, or without a licence, to obtain which, the consent of parents or guardians must be sworn to; and, whoever marries any woman-child under the age of sixteen years, without the consent of parents or guardians, shall be fined, and suffer five years imprisonment; and her estate during her husband's life, shall go to the next heir: and all marriages by licence, (for banns suppose notice,) where either of the parties is under the age of twenty-one, (not being a widow or widower,) without the father's consent, or the mother or guardians, if the father be not living, shall be void.

4. A fourth incapacity is want of reason: the marriage of lunatics, (if found so under a commission,) before they are declared of sound mind by the Lord Chancellor, or the majority of trustees, shall be void.

5. A fifth disability, is where parties have not been married according to the proper forms: all contracts of marriage, without solemnization, are declared of no force: and, no marriage at present is valid, that is not celebrated by a clergyman, by publication of banns, or by licence, in some parish-church, or public chapel; unless, under a special licence from the archbishop of Canterbury.

Marriages are dissolved only by death or divorce. There are two kinds of divorces; the one total, *a vinculo matrimonii*, the other partial only, *a mensa et thoro*. The total divorce must be for some of the canonical causes of impediment, existing before marriage, as, in being too nearly related by blood;

not rising *after marriage*, as being too nearly allied by such marriage, or, as having some corporal imbecility. For in cases of total divorces, the marriage is declared null and void, and the issue of such marriages is illegitimate. But divorce *a mensa et thoro* is partial, and is merely a separation, as in the case of ill behaviour between man and wife, or adultery. In adultery, indeed, the married couple may be totally divorced, but this must be by act of parliament.

In partial divorces *a mensa et thoro*, the law allows the wife a maintenance, which is called alimony, and that settled by the ecclesiastical judge; and, it is generally proportioned to the rank and quality of the parties. But in case of elopement, and living in adultery, the law allows the wife no alimony.

By marriage, the husband and wife, are one person. For this reason, a man cannot grant any thing to his wife, or enter into covenant with her. A woman, indeed, may be attorney for her husband, for that implies no separation. And a husband may bequeath any thing to his wife, as this does not take effect till after his death. The husband, by law, must provide his wife with necessaries, and if she contracts debts for necessaries, he is obliged to pay them. If a wife elopes, and lives with another man, the husband is not chargeable even for necessaries, especially, if the person furnishing such necessaries be apprized of the elopement. And if a woman elopes from her husband, though she does not go away with an adulterer, or in an adulterous manner, the tradesman trusts her at his peril, and the husband is not bound, unless he refuse to receive her again. If the wife be indebted before marriage, the husband shall pay the debt, having adopted her and her circumstances; but, if a wife die before such debts be paid, the husband, provided he has not engaged himself to pay them, is not obliged to do it. If a wife be injured in her person or property, she cannot prosecute, but in her husband's name, as well as her own, and by his concurrence; neither can she be sued without making the husband defendant. There is one exception to this general rule, that is, where the husband has abjured the realm, or is banished; for then he is dead in law. In criminal prosecutions, a wife may be indicted and punished separately, the union between man and wife being only a civil union: but on trials of any kind, they are not allowed to be evidence for or against each other. But where the offence is directly against the person of the wife, this rule has been dispensed with, for, in case a woman be forcibly taken away and married, she may be an evidence against

against such husband, in order to convict him of felony ; being here not accounted his wife, but married against her own consent.

In the ecclesiastical courts, a woman may sue and be sued, without her husband ; man and wife being there considered as two distinct persons. Indeed, in our law, there are some instances in which the wife is separately considered, as inferior to her husband, and acting by his compulsion. All deeds therefore, and acts done by her, are void, except they be fines, or the like matter of record, in which case, she must be solely and secretly examined, to find out whether her act be voluntary. She cannot by will bequeath lands to her husband, unless under special circumstances; being supposed, at the time of making her will, under his coercion. And in some felonious matters, and other crimes of an inferior kind, committed by her, the law excuses her ; but not in murder, or some species of treason. No man can beat his wife, if he does, she may bind him over to his good behaviour, as may the husband the wife ; but, the courts of law will permit a husband to confine his wife, in case of any gross behaviour.

III. The next and most universal relation in nature is that of parent and child. Children, in the eye of the law, are of two sorts ; legitimate and illegitimate.

1. Legitimate children, are such as are born in wedlock, or within a reasonable time after, and the duty of parents, to such children, consists in maintaining, protecting, and educating them.

Maintenance of children is, an obligation of the highest nature, and the law of this kingdom enforces it. The father, mother, grand-father, and grand-mother, of poor impotent persons, shall, if able, maintain them, as the quarter-sessions directs : and, if a parent runs away, and leaves his children, the churchwardens and overseers of the parish shall seize his rents and effects, and dispose of them towards their relief. And, if a mother, or grand-mother marries again, and was able to keep the child or children before such marriage, the husband shall be obliged to do it ; it being a debt of hers, which he is obliged to pay : but at her death, the relationship being dissolved, the husband is no farther bound.

No man is bound to maintain his children, unless, through infancy, disease, or accident, they are unable to work, and even then he is only to provide them with necessaries, the penalty on refusing, being only twenty shillings a month. But it is enacted, That if any Popish or Jewish parent, shall refuse to allow his protestant child a fitting maintenance, with a

view

view to compel him to change his religion, the Lord Chancellor may oblige him to do what is just and reasonable.

Protection of children is also the duty of a parent. A parent may, by our laws, support his children in any law-suit; and may justify an assault in defence of them.

In point of education, parents are left to their own option. But if any person sends a child under his care, beyond the seas, in order to enter into, or reside in any Popish college, or to be instructed, or strengthened in the Popish religion; besides the disabilities incurred by the child so sent, the person shall forfeit one hundred pounds, to the person discovering the offence: And, if any person shall send any one beyond sea, to be trained up in any priory, nunnery, Popish university, college, or school, or house of Jesuits, or priests, or in any private Popish family, in order to be instructed in the Popish religion; or, shall contribute any thing towards his maintenance when abroad, the person, both sending and sent, shall be disabled to sue in law or equity, or to be executor or administrator to any person, or to enjoy any legacy or deed of gift, or to bear any office in the realm, and shall forfeit all his goods and chattels, and likewise all his real estate for life.

The power of parents over their children, allowed by our laws, is not rigorous, but sufficient to keep them in obedience. A parent may correct the child in a reasonable manner, while under age. Without a father's consent to the marriage of his child in a reasonable manner, while under age, the marriage will be void. But a father has no other power over his son's estate, than as his trustee; for, though he may receive the profits of such estate during his son's minority, yet he must account for them when the boy comes of age. He may have the benefit of his children's labour, whilst they are maintained by him. The legal power of a father, (for a mother is only entitled to respect,) over his children, ceases, when they arrive at the age of twenty-one: yet, till that time, he has the command of them, and may by will appoint them a guardian. He may also, during his life, delegate part of his parental authority to a schoolmaster or tutor, who, in consequence of such delegation, may restrain or correct them.

With respect to the duties of children to their parents: to those who gave us existence, and protected us in infancy, we naturally owe subjection and obedience, during our minority; honour and reverence ever after, and protection in the infirmity of their age. A child, by our laws, is justifiable in defending the person, or maintaining the cause of a parent, and, if

if of sufficient ability, is bound, in honour and gratitude, to provide for him, though the parent may be wicked and unnatural.

2. In the case of illegitimate children or bastards; the law is somewhat different.

A bastard, is one born out of wedlock, or before matrimony, or born so long after the death of the husband, that it cannot be supposed to be begotten by him; but, this being a matter of some uncertainty; where a widow is suspected to feign herself with child, in order to bring in a supposititious heir to the estate; the presumptive heir may have a writ to examine whether she be with child or not, and if she be, to keep her under restraint till delivered; but, if the widow be deemed not pregnant, the presumptive heir shall be admitted to the inheritance, though liable to lose it again, on the birth of a child, within forty weeks from the death of the husband. If a man dies, and his widow soon after marries again, and the child be born in such a space of time, as that, by course of nature, it may be the child of either husband; such child may, when arrived at years of discretion, chuse which of the fathers he pleases.

Even children born in wedlock may, in some circumstances, be bastards. As when the husband is out of the kingdom, for above nine months; but generally, during the marriage, access of the husband is presumed, unless the contrary be shewn. In a divorce, *a mensa et thoro*, if the wife produces any children, they are bastards; but, in a voluntary separation, the law supposes access of the husband, unless a negative be proved. So, also, if there appears any impossibility of procreation in the husband, as if he be but eight years old, the issue of the wife is bastardized. Likewise, in cases of divorce *a vinculo matrimonii*.

The duty of parents to bastard children, is chiefly that of maintenance. When a woman is brought to bed, or declares herself pregnant, and will, before a justice of peace, charge any person on oath, with having got her with child; such person shall be taken up, and committed till he gives security to maintain the child, or appear at the next quarter sessions, to dispute and try the fact. But, if the woman dies, or is married before delivery, or miscarries, or is proved not to have been pregnant, the person shall be discharged; otherwise, two justices, may charge the mother, or the reputed father, with the payment of money for the support of the child: and, if such reputed father or mother run away from the parish, the overseers, by direction of two justices, may seize

seize their rents and effects, if they have any, to bring up such bastard child. No woman, however, can be compelled to declare who is the father of the child, till one month after her delivery.

Bastards are considered as having no father, nor can they inherit any thing. But a bastard may acquire a surname, by reputation. Legitimate children, have their first settlement in their father's parish, but illegitimate children, in the parish where they are born. In cases of fraud, indeed, as where a woman is passing from one parish to another, by order of justices, or comes to a parish, to which she does not belong, begging, as a vagrant, and drops her bastard there; in the first case, the child shall belong to the parish from which the mother was illegally removed; and, in the other, if the mother be apprehended for her vagrancy, to the mother's parish. Bastards, born in any licensed hospital, belong to the parish, to which the mother belongs.

Bastards are heirs to no one, nor can they have any heirs, but of their own bodies: a bastard may however be made legitimate, and capable of inheriting by act of parliament. If the issue, however, of a bastard purchase land, and die without issue, though the land cannot descend to any heir on the part of the father, yet, to the heir on the part of the mother, (being no bastard,) it may; so, if the bastard was attainted. Considered in a civil light, a bastard has no relation, but yet he cannot marry his mother, sister, or the like.

IV. The last general private relation is, that of guardian and ward.

Of the several species of guardians, the first are guardians by nature, *viz.* the father, (and sometimes the mother,) of the child; as where an estate is left to an infant, the father is the guardian, and must account to his child when he comes of age, for the profits; and, with respect to daughters, the father may, by will or deed, appoint a guardian to them while under the age of sixteen, and if none be so appointed, the mother shall be guardian. There are also guardians for nurture, or bringing up the child, which are the father or mother, till the infant is fourteen years old; but, in the case of an orphan, the bishop of the diocese usually appoints a guardian to take care of him. There are also guardians in non-age, these take place only where the minor is entitled to some real estates in land, where guardianship devolves on the nearest relation he has, to whom the inheritance cannot descend; as for example, on his uncle by the mother's side, if he inherits from his father, for such uncle can never inherit

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this estate. Wisely designed, that this guardian may have no interest in the death of his ward. Guardians in socage, continue only till the minor is fourteen, for then he may chuse his own guardian, provided this guardian was not the appointment of his father, in which case, the guardian keeps his office till the ward is twenty-one.

The power and duty of a guardian and ward, are, for the time, just that of the father and child, with this difference only, that the guardian, when the ward comes of age, is bound to give him an account of all he has on his behalf done, and must make satisfaction for all losses, owing to his wilful default or negligence.

Let us now consider the ward, who is said to be a minor, or within age. The ages of male and female are different, for different purposes. A boy at twelve, may take the oath of allegiance; is at years of discretion at fourteen, and may consent or not to marry, may chuse his guardian, and if his discretion be proved, may dispose of his personal estate by will; at seventeen, he may be an executor; and, at twenty-one is his own master. A girl, at the age of seven, may be betrothed or given in marriage; at nine, is entitled to her dower; is at years of maturity at twelve, and may consent or not to marry, and, if proved of sufficient discretion, may give away her personal estate by will; at fourteen, she is of legal discretion, and may choose a guardian; at seventeen, may be executrix, and, at twenty-one, is her own mistress. Full age in man and woman is twenty-one years, completed on the day preceding the birth-day.

A minor cannot be sued, but under the protection and name of his guardian; but, he may sue either in the name of his guardian, or any friend; nay, by means of such friend, minors have filed bills in chancery against their guardians. In criminal cases, a minor at fourteen, may be executed for any capital offence, but cannot under seven years of age. In civil matters, a minor loses nothing for neglect in demanding his right. Minors cannot alienate their estates; but, minor-trustees or mortgagees, may convey under the direction of the court of Chancery, the estates they hold, either in trust or mortgage; and, though a minor can do no legal act, if patron of a living, he may present to the benefice when vacant. A minor, may also purchase lands, but, when of age, he may either agree or not to such purchase, and his heirs, inheriting from him may do the same, if he dies a minor. A minor may bind himself apprentice for seven years, and may appoint

appoint a guardian to his children. Though no contracts a minor makes are binding on him, yet he may bind himself to pay for necessaries and for his education.

Chap. Eleventh.

OF BODIES CORPORATE.

HAVING considered the people as individuals, and treated of their personal rights, which die with them, we come next to those rights that never die, but are called Corporations. Corporate bodies are capable of retaining and defending any privileges granted them, which voluntary associations could not. They are also capable of holding estates, which they could otherwise not, without endless conveyances, from one to another, as often as the possessions are changed. But, when a number of men are incorporated, both they and their successors are considered as one and the same person. They have but one will, collected from the majority of the body, and this single will establishes rules and orders for the regulation of the whole.

Corporations are first either aggregate or sole. The aggregate consists of the union of many individuals; as, those of towns, colleges, and chapters; sole corporations consist of one person only and his successors, designed to give them perpetuity, which in their natural persons they could not enjoy. The King, for example, is a sole corporation; so is a bishop; so are some deans; and so is every rector or vicar. The necessity of this measure or institution, will appear in considering the rector of a parish. At the original endowment of parish-churches, the freehold of the church, glebe, &c. was vested in the rector, by the bounty of the donor, with a design, that it should be continued to his successors. For was this freehold vested in the natural person of the rector, it might descend to his heir, and be liable to his debts, or at best, the heir could only be compelled to convey this right to the succeeding rector. The law therefore has ordained, that though the man may die, the rector shall live on, by making him and his successors, like the King, a corporation.

Among corporations are the following, the mayor and commonalty of a borough town, trading companies, churchwardens, the College of Physicians, the Company of Surgeons, the Royal Society, the Universities, charitable foundations, hospitals,

hosptials, bishops, deans, arch-deacons, rectors, vicars and chapters.

In the erection of any corporation, the King's consent is absolutely necessary. Those which exist at Common Law, as the King, a bishop, a rector, and some others, are supposed to have had the concurrence of former Kings. Corporations once erected, live by their names, by which names they perform their corporate offices.

Their powers and rights are, 1. To have perpetual succession. 2. To sue or be sued, &c. by the corporate name. 3. To purchase lands and hold them. 4. To have a common seal, and, 5. To make bye-laws for their better government; which, if not contrary to the laws of the land, are binding upon that body-corporate; if contrary, the penalty is forty pounds.

All corporate bodies are bound to act up to the end and design for which they were founded and incorporated, and to keep them to this, the law has provided certain persons to visit, and correct such abuses. The King, is the visitor of the archbishop; the archbishop, of the bishops; the bishops, of all deans and chapters; rectors and vicars, and all other spiritual foundations; and, in all lay-corporations, such as hospitals, &c. the visitors are the founders, their heir or assigns. The founder of most civil ones, such as boroughs, towns, trading companies, &c. is the King, and he exercises this jurisdiction in the court of King's Bench, where all abuses are enquired into and redressed. In charitable foundations, where the founder has appointed no visitor, it is the office of the bishop of the diocese. In cases, where the visitor is under temporary disability, the court of King's Bench will interfere.

Any particular member of a corporation, may lose his place in such body corporate, by acting contrary to the laws of the land, or the laws of his society, or he may resign it. And the corporation itself may be dissolved several ways. 1. By act of parliament. 2. By the natural death of all its members. 3. By a surrender of its franchises into the hands of the King. And, 4. By forfeiture of its charter. In case of the dissolution of a body-corporate, its lands and tenements revert to him, (or his heirs,) who granted them, all its debts are extinguished, and all its claims cease.

BOOK II.

On the Rights of Things.

Chap. First.

OF REAL PROPERTY.

HAVING treated of such rights as are annexed to the persons of men, we proceed to such as may be called their property.

Objects of property are things—either real or personal: real, are such as are in their own nature immoveable; as lands and tenements; personal, such as may be moved; for example, goods, money, &c.

There are two sorts of real property; lands, and hereditaments. Land is what every one knows: hereditaments imply, not only houses and other buildings, but, every thing that may be inherited. Thus it is applicable, not only to lands and houses, but to offices, rents, commons, advowsons, franchises, peerage, or other property of the like unsubstantial kind.

Hereditaments then, are either corporeal or incorporeal. Corporeal are such as may be seen or felt; incorporeal, such only as exist in idea.

Corporeal hereditaments, imply substantial and permanent objects, which may be comprised under the word Land, such as arable grounds, meadows, pastures, woods, moors, waters covering land, marshes, and heath; also houses, and other buildings, which is land built upon: so, that conveying land or ground, we naturally convey with it any building standing upon such land.

Under the idea of land, is comprised the space above and below it, that space in a direct line above ascending to the clouds,

clouds, so that none may erect a building to overhang another's ground ; and, that space underground, in a direct line, towards the centre of the earth. Mines, for example, go with the property of the surface ; so, that the word Land includes, not only the surface of the earth, but every thing above it and below it.

An incorporeal hereditament, is a right, issuing out of a corporeal one, and are chiefly ten. Advowsons, tithes, commons, ways, offices, dignities, franchises, pensions, annuities, and rents.

1. An advowson, is the right of presentation to a living; he who has the advowson, is called the patron. For lords of manors, who built churches on their estates, and endowed them with land, tithes, &c. had the privilege of nominating whom they pleased, to be minister of such church, provided he was canonically qualified, which the bishop of the diocese was to enquire into.

There are a kind of advowsons, called Donatives, where the King hath licensed any person to build a church or chapel, and ordains, that it shall be in the gift of the patron without presentation, institution, or induction. In which case, it is subject only to the patron's visitation. But should the patron once waive this privilege of donation and present to the bishop, and the person presented be admitted and instituted ; the advowson, will be ever after presentative and not donative.

2. The next kind of incorporeal hereditaments, are tithes; which, are the tenth part of the produce of lands, the live-stock feeding and growing there, and the personal industry of the inhabitants. There are three species of tithes, viz. predial, mixed, and personal. 1. *Predial* tithes are corn, grafts, hops, and wood. 2. *Mixed*, are wool, milk, pigs, &c. being natural products, nurtured by care. 3. *Personal* tithes, are those arising from trades, fisheries, and the like, of which, only a tenth part of the clear gains is due.

Tithes are to be paid for every thing that yields an annual increase, as a profit to the owner ; such as grain, hay, fruit, cattle, poultry, &c. but not for stone, lime, chalk, and other substances of the earth.

But there are exemptions from paying tithes, by composition and culom. Where persons are exempted by composition, it is by an agreement, between the owner of the lands and the minister, with the consent both of patron and ordinary, that such lands shall be exempted from paying tithes on account of a certain adequate satisfaction made in lieu

lieu of them : but, no composition, made since the thirteen of Elizabeth, is valid, for a longer term than three lives, twenty-one years, an act being passed at that time, to prevent it.

Exemption by custom, is where certain lands have been wholly or partially discharged, time out of mind, which called a *modus*.

Some are exempt from paying any tithes at all, as is the King, by his prerogative. A vicar pays no tithes to the rector, nor a rector to the vicar ; but, these exemptions are confined to the King and the clergy : for their tenant or lessor shall pay tithes, though the lands could not be titheable in their own hands. Some monasteries have also been discharged from paying tithes ; and, those lands that are now titheable have become so, by having such abbey lands.

3. Right of common is another incorporeal hereditament, being a right one man has in the land of another, such as to feed his cattle, catch fish, dig turf, cut wood, &c.

The soil of those waste grounds called Commons, is property of the lord of the manor, as in common fields it belongs to particular tenants : for, when lords of manors grant out parcels of lands to tenants, they gave such tenants a right to feed their cattle upon the wastes. Where the commons of two distinct manors join, so that the cattle on one stray upon the other, it is a mutual trespass that cannot well be avoided, unless such commons were divided, and therefore the law winks at it. Such right of common is generally limited as to number and time ; but, there are commons without stint, open to the tenant all the year. The lord of the manor, however, may enclose as much of the waste for pasture or wood-ground, as he pleases, provided he leaves sufficient common for those who are entitled to it. No one but the lord has any interest in the soil ; but, in the common, the interest both of lord and commoner is mutual. They may both bring actions, either against strangers or each other ; the lord for the publick damage, and each commoner for his private loss.

There is in some places also a liberty of fishing in certain waters, and in others, a liberty for digging turf in certain wastes. There is also a common for digging coals, mineral stones, and the like.

Further ; there is a liberty in some places of taking necessary wood from another's estate, for the use of a house, implements of a farm. This is called estovers or housebote, plough-bote, and cart-bote. The first is a sufficient allowance of wood, to repair houses, and for fire ; the last two, for wood for

for making, and repairing implements of husbandry. These botes any tenant may take off the land without leave, unless he be restrained by special covenant.

4. Ways, or the right of going over another man's ground, is a further species of incorporeal hereditaments. The King's highways, and ways from villages are not here meant, but private ways; which may arise from grant or custom; or, an impossibility of getting to a piece of ground granted, any other way.

5. A right to exercise any public or private office, and to take the fees, is a fifth species of incorporeal hereditaments. A person may have an estate in such office, or a term of years.

6. Dignities are a sixth species, but of these we have treated.

7. Franchises are a seventh. These are royal privileges, branches of the King's prerogative, granted to the subject by the crown.

To be a county palatine, is a franchise; to be incorporated, is another. Court-leets, manors, lordships, to have waifs, wrecks, &c. to have a court of one's own, and a liberty of trying causes; to have a fair or market, with the right of taking toll there, or at other places, as at bridges, wharfs; to have a forest, chase, park, warren, fishery: these are all franchises.

8. Annuities are an eighth species: being a yearly sum chargeable upon the person of the grantor, and which the grantor is answerable for as long as he lives; no act of bankruptcy or insolvency being able to discharge him.

9. Rents are the last species of incorporeal hereditaments, being certain profits annually issuing out of lands and tenements, corporeal.

If no particular place be named in the reservation, all rent is payable upon the land from whence it issues, except rents to the King, which must be paid at the Exchequer, or to his country receiver; and, rent is demandable and payable, before sun-set of the day it is made payable on.

Chap. Second.
OF TENURES.

A LMOST all the real property of this kingdom is, supposed to be granted, by some superior lord, in consideration of certain services, to be rendered to the lord, by the tenant

tenant or possessor of this property. The land holden, is called a *tenement*, the holder a *tenant*, and the manner of holding, a *tenure*.

The free lands of this kingdom, are now held by socage, which is a tenure, by any certain and determinate service : as to hold lands by fealty, and twenty shillings rent ; or, by homage, fealty, and twenty shillings rent ; or, by homage and fealty, without rent ; or, by fealty and certain personal services, such as ploughing the lord's land for three days ; or, by fealty only. All these are tenures in socage, which, in its original signification, implies free tenure.

But there is a kind of tenure among us, called *Copyhold*, which leads us to say something of manors.

A manor was formerly a barony, and consisted of a certain district of land, the usual residence of the owner, some part of which he kept in his own hands, for the use of his family; the rest was distributed among his tenants, under two different modes of tenure. Some were held by deed, under certain rents and fee-services, and some without any writings, were allotted to the common people, at the will of the lord, and resumed at his discretion ; the residue, being uncultivated, was called the lord's waste, and served for public roads, and for common pasture for the lord and his tenants. Each lord of a manor is empowered to hold a court-baron for redressing misdemeanors and nuisances within his manor, and for settling disputes of property among his tenants. And this court is so essential a part of every manor, that if not attended by two tenants, the manor is lost.

Such of the King's greater barons, as held a large extent of territory under the crown, frequently granted out smaller manors, to be held under them. Such extent of territory, comprising sundry manors, is called an *Honour*, and the lord is called *Lord paramount*.

Those lands that were held by deed, under certain rents and fee-services, differed nothing from free socage lands ; but those that were allotted to the common people, at the pleasure of the lord, were, like estates, held formerly in villenage, whereby the holder was bound, to do whatsoever his lord commanded him. Certain indulgencies of lords, certain constructions of the law, and certain incroachments of the tenants, have, however, since altered the nature of this tenure, and though such tenants are still to hold their estates, at the will of the lord, yet it is such a will, as is agreeable to the custom of the manor ; which customs are preserved by

by the rolls of courts baron, or the constant usage of the manor. And those tenants, who have nothing to shew for their estates but admissions in purfiance of these customs, witnessed by copies of entries in their possession, made by the stewards of courts-baron, are called *Tenants by copy of court-roll*, and their estates is thence called a *Copyhold*. Their services are now usually commuted for a small pecuniary quit-rent.

The appendages of a copyhold tenure, besides those in common with free-tenures, are heriots, wardships, and fines. Heriots are a tribute of the best beast the tenant possessed, or other moveable goods (as the custom may be) to the lord, on the death of the tenant, a manifest relief of villein tenure, nor was this to be considered as a hardship, as all the tenant's goods and chattels were in fact the property of the lord, and he might have seized the same at any time.

With respect to wardship, the lord is the legal guardian, and he usually assigns some relation of the minor-tenant to act for him. Of fines, some are due on the death of each tenant; and others are mere fines, paid for alienation of lands. In some manors only one of these sorts can be demanded, in some both, and in others, neither. Sometimes they are fixed by custom, and sometimes are arbitrary, at the will of the lord; but even when arbitrary the courts of law have tied them down to be reasonable. In short, no fine can now be demanded, (unless in particular circumstances) of more than two years improved value of the estate.

The next object of enquiry is the nature of freehold estates which may be divided into those of *inheritance*, and those *not of inheritance*.

1. Freeholds of inheritance, are where the possessor, or the tenant in fee-simple, holds lands and hereditaments, to him and his heirs for ever.

2. Freeholds not of inheritance, are for life only; for example, where a lease is granted to a man to hold for his own life, that of any other person, or for more lives than one; or where such an estate falls to a man by the operation of law; in all which cases, he is styled a tenant for life.

The emoluments of a life-estate are principally the following:

1. Every tenant for life, unless restrained by agreement, may cut wood for firing, and implements of husbandry, but he may not fell timber, or do other waste upon the premises.

2. Neither he nor his representatives shall be prejudiced by
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any sudden determination of his estate. Thus, if a tenant for life sows his land and dies before harvest, his executors shall have the crop. So, if a lease be made to husband and wife during coverture, or the time they continue so, and the husband sows the land, and a divorce takes place before the harvest, the husband shall have the crop. In like manner, persons presented to any ecclesiastical benefice, or any civil office, are considered as tenants for their own lives, unless the contrary be expressed in the form of donation.

3. A third emolument relates to lessees; for, they have not only the same, but greater indulgencies than their lessors the original tenants for life; for in cases, where a tenant for life shall not have the profits of his labour, owing to the estate's expiring from some act of his own; this exception shall not reach his lessee or under-tenant. As where a woman holds an estate during her widowhood; if she marries, she loses the estate; but, this act of hers shall not deprive her tenant of the crop, when such tenant has sown the land.

A freehold for life, happening by operation of law, is of three kinds: *viz.* 1. That of tenant in tail after possibility of issue extinct. 2. That of tenant by the curtesy of England; and, 3. that of tenant in dower.

1. A tenant in tail after a possibility of issue extinct is, where a person, to whom, and to whose heirs by his present wife, (suppose Mary,) an estate is granted, should, losing his wife, and having no children living by her, become tenant for life, to that estate; for in this case the estate cannot descend to any one. Such an estate must be created by the act of God, arising from the death of that woman, out of whose body the issue was to spring. A person enjoying an estate in this manner, is not punishable for waste, &c.

2. A tenant by the curtesy of England, is a man who marries a woman possessed of an estate of inheritance, who has, by her, issue born alive, and capable of inheriting her estate. In this case he shall, on the death of his wife, hold the lands for his life. But there are four requisites necessary to make this claim good. 1. The marriage must be legal. 2. The wife must have been in actual possession of the estate; except in the case of some incorporeal hereditaments; such as the advowson of a church, which did not become vacant during the wife's life. 3. The issue must be born alive, and during the life of the mother. 4. The last requisite is the death of the wife, before which the husband has not a complete

plete claim to the estate, though he may before do many acts to charge the lands.

3. Tenant in dower, is where the wife shall have, for her natural life, a third part of all the lands and tenements which her husband possessed during the coverture.

In order to have her thirds, she must be the wife of the party at the time of his death. If she be divorced *a vinculo matrimonii*, she cannot have her dower, but a divorce *mensa et thoro*, only, does not destroy it. Yet now, if a woman elopes from her husband, and lives with an adulterer, she loses her dower, unless her husband be voluntarily reconciled to her.

A widow, by law, is entitled to a third part of all lands and hereditaments her husband possessed, estate or real effects, and of all reversionary estates to which he was entitled; in short, of any thing, of which any child she might have had, might possibly have been heir. Nay, if a man alienates his land during the life of his wife, and she not divorced; when a widow, she is entitled to the thirds of such alienated lands, for he parts with them liable to dower. Copyholds are not liable to dower, being estates only at the will of the lord, unless it be by the special custom of a manor.

A jointure is a joint estate, strictly speaking, limited to both husband and wife, or a sole estate limited to the wife after the death of the husband, which being made to her before marriage, precludes her for ever, from her dower. But then these four requisites must be punctually attended to. 1. The jointure must take place immediately on the husband's death. 2. It must not be for a shorter term than her own life. 3. It must be made to herself alone; and 4. It must be particularly expressed in the deed of conveyance, that such jointure is in satisfaction of her whole dower. If this jointure be made after marriage, she can choose, after the death of her husband, whether she will accept of the jointure, or her dower. And if by any fraud or accident, the jointure proves to be on a bad title, and the widow is turned out of possession, she may claim her dower.

Chap. Third. OF TITLES TO ESTATES.

WE come now to the titles by which estates are claimed; and, these may be acquired two ways, by *descent* and *purchase*.

I. Descent, or inheritance, is that claim or title whereby a man acquires his estate on the death of his ancestor, as his heir at law; the following rules of inheritance are laid down in law.

1. Inheritances shall lineally descend to the issue of the person last actually in possession, *in infinitum*; but shall never lineally ascend.

The person next in the line of succession is either called the *beir-apparent*, or *beir-presumptive*; the heir-apparent is he, who, if he outlives his ancestor, has an indefeasible right of inheritance, as the eldest son or his issue; the heir-presumptive is he, who, if his ancestor should die immediately, should be his heir, as a brother or nephew; but whose presumptive succession might be destroyed by the birth of a child. For example, if my elder brother has no son, my eldest son will enjoy his grandfather's title or estate; but should he have a son, it will cut him off. Nay, even supposing my son should inherit after the death of my father and my brother; should my brother leave his wife with child, such posthumous child, when born, shall deprive my son of the title or estate he had taken possession off. But it must be remembered, that no one can inherit by virtue of his ancestor, unless such ancestor was in actual possession of the estate.

2. The male issue shall be admitted before the female.

Thus sons shall inherit before daughters; but, daughters shall succeed before any collateral relations.

3. Where there are two or more males in equal degree, the eldest only shall inherit; but, the females altogether.

Thus, where a man leaves two sons, John and Thomas, and two daughters, Mary and Elizabeth; John, his eldest son, shall inherit solely: if John dies without issue, Thomas shall solely succeed; and if Thomas dies also without issue, the daughters shall inherit together, as co-heiresses or co-parceners.

4. The lineal descendants *in infinitum* of any one deceased, shall inherit as their father or ancestor would have done before them.

Thus, the child, grandchild, or great grandchild, (either male or female,) of the eldest son, succeeds before the younger son, and so on. If there be two sisters, Mary and Elizabeth, and Mary dies, leaving four daughters, and after this the fathei of Mary and Elizabeth dies, leaving no other children; in this case, his estate shall be divided into two parts, of which Elizabeth shall take one part, and the four daughters of Mary shall take the other, as the representatives of their mother. A similar

similar division would take place, if an estate fell to the issue of a man's three sisters, one of which sisters left three children, one two, and the other one; for in this case, the estate would be divided into three parts, and one-third would be the property of the three children of one sister; one-third the property of the two children of the second sister, and one-third the property of the child of the other sister. So again, if a man dies, leaving three daughters, *A*, *B*, and *C*, and *A* dies, leaving two sons; *B* leaving two daughters, and *C* leaving a daughter and a son; the eldest son of *A* shall inherit one-third of the estate, in exclusion of his younger brother; the two daughters of *B*, another third, as coparceners, and the son of *C*, the remaining third, in exclusion of his eldest sister; because, the eldest son inherits before the younger, the son before the daughter, but the daughters in coparcenary.

5. On failure of lineal issue, of the person last in possession, the inheritance shall descend to the blood of the first purchaser, subject to the three preceding rules or maxims.

By the first purchaser is understood, he who first acquired the estate to his family, no matter how he came by it, so as he did not obtain it by descent.

II. The other way by which titles may be acquired, is by purchase.

Purchase here implies *perquisitio*; denoting any means of acquiring an estate, out of the common course of inheritance. If I give land freely to another, he is in the eye of the law, a purchaser; for he obtains that land by his own agreement, that is, by consenting to the gift. If my father's estate be entailed upon me, before I am born; when I am in possession of that estate, I am deemed in law, a purchaser; for I take quite another estate than the law of descents would have given me. Nay, where an ancestor bequeaths his estate to his heir at law, with any other limitations than the course of descents would direct, such heir takes by purchase: but if a man, possessed of a freehold, leaves his whole estate to his heir at law, so that the heir takes neither a greater nor a less estate by the devise, than he would have done without it: he is deemed to have taken it by descent, though such freehold be charged with incumbrances for the benefit of creditors and others.

Now an estate acquired by such purchase, is descendible to the purchaser's blood in general, and not confined to the heirs by the father's or mother's side; but, descends to the heirs general, first of the father's side, and upon failure of issue here, to the mother's side. An estate also enjoyed by purchase

will not make the heir responsible for the acts of the ancestor, as is the case in estates by descent. For, if the ancestor by any deed, should bind himself and his heirs, such deed shall be only binding on the heir, and so far only, as he had any estate of inheritance vested in him, (or in some person in trust for him) by descent from that ancestor, sufficient to answer the charge; whether he remains in possession, or hath alienated it before an action be brought; which sufficient estate is called *assets*. If a man therefore covenants for himself and his heirs, to keep my house in repair, I can then, (and then only,) compel his heir to repair the premises, when he has assets or estate sufficient by descent from the covenantor, to answer the purpose; for though the covenant descends to the heir, whether he inherits any estates or not, it lies dormant, and is not compulsory, till he has assets by descent.

Purchase under this signification, includes the following methods of acquiring a title to estates. 1. Escheat. 2. Occupancy. 3. Prescription. 4. Forfeiture. And, 5. Alienation.

I. Escheat, is that of an estate's reverting, for want of an heir, to the lord of the fee, by whom it was originally given; the doctrine of escheats, being founded on this principle, that the blood of the person who last possessed the fee-simple of the estate, is by some means or other, utterly extinct and gone. This is the case, if the last holder dies without heirs; or, if his blood be attainted, for an attainder extinguishes blood. Let us see then how hereditary blood may fail.

1. Hereditable blood is wanting, when the estate-holder dies, without any relations on the part of any of his ancestors.

2. When he leaves no relations descending from those ancestors, from which his estate descended.

3. When he leaves no relations of the whole blood.

4. A monster, without human shape, although born in wedlock, cannot be heir to any land; of course, such a birth will not entitle the husband to be tenant by the curtesy.

5. Bastards also have no hereditable blood; nor have they any legal ancestors; of course, no legal collateral kindred, nor any legal heirs, but such a claim by a lineal descent from them. A bastard, therefore, purchasing land and dying possessed thereof; intestate, without issue, the land shall escheat to the lord of the fee. There is one determination in law, however, favourable to bastards, which is, when a man has a bastard son, and afterwards marries the mother, and by her has a legitimate

a legitimate son, and then dies, and the bastard son enters upon his estate, and enjoys it uninterrupted to his death, whereby the bastard's issue becomes possessed thereof; neither his legitimate son, nor any other person, can claim that estate afterwards; for the law will not suffer the matter to be unravelled after the death of such bastard. The right heir should have ejected him when alive.

6. Neither are aliens allowed to have any heritable blood; of course, no relations that are foreigners, can inherit by descent. If an alien be made a denizen, and should then purchase an estate, his son, born before he became a denizen, cannot inherit that estate; but, a son, born afterwards may. Should such alien, however, have been naturalized by act of parliament, such eldest son might then have inherited. But all natural-born subjects of the King, may inherit by descent, from any of their ancestors, lineal or collateral; although their father or mother, or other ancestor, from whom they derive their pedigrees, were born out of the King's allegiance; provided that no right of inheritance shall accrue to any person whatsoever, unless they are in being, and capable to take as heirs at the death of the person last seized; excepting, however, in the case where lands shall descend to the daughter of an alien; which descent shall be diverted in favour of an after-born brother, or the inheritance shall be divided with an after-born sister or sisters, according to the usual rule of descents by Common Law.

7. The blood of a person attainted for felony, is so corrupted in the eye of the law, as not to be allowed any longer inheritable; of course any fee simple the felon possessed would escheat to the lord of the fee, if forfeiture to the King did not intercept it in its passage: in cases of treason, it does for ever; in other felonies, for a year and a day only, after which, it escheats to the lord. In consequence of this doctrine, all estates of inheritance escheating to the lord, the widow of the felon was liable to lose her dower, till it was enacted, That though any person be attainted of misprision of treason, murder, or felony, yet his wife shall enjoy her dower. But where the law of forfeiture takes place, as it does in treason, she cannot be endowed.

Escheat in the case of attainder, goes still farther; for, the blood of the tenant being utterly extinguished, he not only loses all that he hath, but is incapable of inheriting any thing for the future; for should his father die, possessed of an estate, that estate shall escheat to the lord, because the son being attainted,

tainted, is incapable to inherit, and there can be no other heirs during the son's life, and if he was attainted even for treason it escheats to the lord, for no forfeiture take place to the King, unless the felon had been in possession. But, in such a felony, where the statute expresses that it shall not extend to corruption of blood, the estate of the felon shall not escheat to the lord, but the profits of it shall be forfeited to the King, while the offender lives.

Nay, the person so attainted is not only incapable of inheriting himself, but no estate can pass through him to his posterity: his sons for example, can neither inherit his estate, nor the estate of his father, their grandfather, nor any other ancestor on his part, by virtue of any claim he might have had. Where a man is even attainted and pardoned by the King, his son can never inherit either from him or from his ancestors, through him; unless such son be born after the pardon; for the pardon makes the father a new man; but if such son, born after the pardon, be a second son, having an elder brother born before the pardon; such second son cannot inherit while his elder brother be living, but the estate shall escheat to the lord. Further, where a man hath two sons, *A* and *B*, and *A* the elder, in the life-time of his father, marries and hath issue, and then is attainted and executed, and afterwards the father dies, the estate of the father shall not even descend to *B*; for the issue of *A*, which once had a possibility to inherit, shall bar the descent to *B*, and the estate shall escheat to the lord. To prevent this hardship to guiltless children, almost every act of parliament since Hen. VIII. creating felonies, declares that they shall not extend to any corruption of blood. But it must be remembered, that no estates escheat, but entire fees-simple.

II. Occupancy is another claim to lands under the title of purchase; which is, taking possession of things which before belonged to no one.

The right of occupancy, so far as it relates to estates, is confined to one single instance, *viz.* where a man has lands granted to himself only, not his heirs, for the life of another person, and dies during that life, by which he held them. In this case, he that could first enter on the estate, might lawfully retain possession during that life, by which the deceased person held it, unless the reversion of such estate was in the crown. But it is now enacted, that the tenant for the life of another may devise it by will, or it shall go to the executors or administrators, and be assets in their hands for payment of debts; also that the surplus of such estate for another man's life, after payment of debts, shall go in a course of distribution, like a chattel interest.

In other cases where a landholder dies intestate, and no heir or owner can be found, the law gives the estate to the King, or to the lord of the fee.

If an island arises in the middle of a river, it belongs to the owner of the island on that side, to which the said island is nearest; but if an island arises in any sea belonging to the crown of England, it is the property of the King. New land on the coast, occasioned by washing up of sand or earth, or by the sea's retiring, provided such new land is acquired by small degrees, belongs to the owner of the land adjoining; but should such new land appear suddenly, it belongs to the King. Where a river, running between two lordships, by degrees gains upon one leaving the other; the owner, losing his grounds thus gradually, has no remedy; but should the course of the river be suddenly changed, the man who thereby loses his ground shall have, as a recompence, what the river has left in another place.

III. Prescription is a third method of acquiring real property under the denomination of purchase; that of being able to shew no other title to what we claim, then that it has been in our family, time immemorial; but to make this title good, our ancestors must have possessed the right within the space of sixty years of the time that we claim it.

1. Nothing, however, but incorporeal hereditaments, such as a right of passage, common, &c. can be claimed by prescription. 2. Nor can any landholder claim under this title, but a tenant in fee; that is, no copyholder no tenant for life, for years, or at will. If a copyholder does it, it must be under cover of his lord's estate; if a tenant for life, under cover of the tenant in fee-simple. 3, Every prescription supposes a grant to have existed; of course, the lord of a manor cannot claim a right of raising a tax or toll upon strangers, because no grant could authorize such a claim. 4. Neither can what is to arise by matter of record be prescribed for, it must be claimed by grant, entered on record; such as the royal franchises of deodands, felon's goods, and the like. These not being forfeited, till the matter on which they arise is found by jury, and thus made a matter of record, the forfeiture itself cannot be claimed by any inferior title. But treasure-trove, waifs, estrays, &c. may be claimed by prescription, for these arise not from any matter of record. 5. If a man claims a right in himself and those whose estate he holds, nothing is claimable by this prescription, but such things as are incident, or appendant to lands; for example, that he, or those whose manor he holds, held such a certain

a certain advowson as *appendant* to that manor : but if the advowson be distinct inheritance, not appendant, and he meant to claim it, he must do it in the name of himself and his ancestors.

Estates gained by prescription, are not, like other purchases, descendible to the heirs in general. If a man prescribes for a right of a passage through any ground as a right in himself and his ancestors, it will descend only to the blood of that line of ancestors in whose name he so claims ; but if he claims in right of himself, and those whose estate he holds, it will descend in the same manner as the estate descends, whether it was acquired by descent or purchase.

IV. A fourth method of acquiring real property by purchase is forfeiture. Now lands may be forfeited in various degrees, and by various means ; as, 1. By crimes and misdemeanors. 2. By alienation, contrary to law. 3. By lapse. 4. By simony. 5. By non-performance of covenants. 6. By waste. 7. By breach of copyhold customs ; and, 8. By bankruptcy.

1. We shall have occasion to speak more fully hereafter of forfeiture for crimes and misdemeanors ; at present, I shall only mention the offences that incur a forfeiture of lands and hereditaments. These are, treason ; felony ; misprision of treason ; *præmunire* : drawing a weapon on a judge or striking any one in the presence of the King's principal courts of justice.

2. They may be forfeited also by alienation, or conveying them to another contrary to law.

1st. Alienation of lands or hereditaments to any corporation, is contrary to law, and called alienation in *mortmain* : religious houses in this way became proprietors of estates, which were perpetually inherent in one *dead hand*. To prevent this, many statutes from time to time have been passed : but a man may bestow lands for the maintenance of a school, an hospital, or other *charitable* purposes : to prevent, however, persons on their death-beds from making large and improvident legacies, even for these good purposes, which was the design of the several mortmain laws ; it is enacted that no lands or tenements, (that is hereditaments,) or money to be laid out thereon, shall be given for any *charitable* uses whatsoever, unless, by deed, executed in the presence of two witnesses twelve calendar months before the death of the donor, and enrolled in the court of Chancery, within six months after its execution, (except stocks in the public funds, which may be transferred within six months previous to the donor's death, (and unless such gift be made to take effect immediately, and be without power of revocation ; and, that all other gifts shall be void. The universities of Oxford

ford and Cambridge, their colleges, and the foundations of Eton, Winchester, and Westminster, are excepted out of this act ; provided that no college purchase more advowsons than are equal in number to half the fellows on the respective foundations.

2dly. Alienation of lands and tenements to an alien, incurs a forfeiture of the same to the crown.

3dly. Alienation by tenants of estates for life or a certain time, incurs also a forfeiture of such estates to those whose right is attacked thereby, when such tenants shall presume to convey the estates they hold, in a greater manner than the law entitles them to do. For example, if a tenant for his own life, conveys away his estate, for the life of another, or in tail, or in fee, he does what he is not empowered to do ; these being estates which either must or may last longer than his own life : the punishment for which is, a forfeiture of his own term in the estate to him who has the reversion after him.

Equal both in its nature and consequences to this illegal alienation, is that crime which the law calls a *disclaimer*, where a tenant, holding lands of any lord, neglects to render him the due services, and upon an action brought to recover them, disclaims to hold of his lord. So also, if, in any court of law, a tenant for his own life, claims any greater estate than was granted him, or takes upon himself those rights which belongs to tenants of a superior class : if he asserts the reversion to be in a stranger, by accepting his fine, attorning as his tenant, (that is, acknowledging himself to be his tenant;) by any collusive pleading, or the like, such behaviour incurs a forfeiture, of his estate.

3. Lapse is a kind of forfeiture, whereby the right of presentation to a benefice falls to the diocesan, if the patron neglects to present in time ; to the archbishop of the province, if the bishop neglects ; and to the King, if the archbishop neglects. That the church may not remain long unprovided, the law instituted this lapse to quicken the patron. Where there is no right of institution, there is no lapse ; of course, no donative can lapse, unless it has been augmented by the Queen's bounty : nor can any living lapse, the presentation of which is originally in the crown.

Six calender months, exclusive of the day of avoidance, is the term in which the right to present by lapse accrues from one to the other successively. Where the diocesan is patron, he shall only have one six months to collate or fill the church-in. If the bishop does not collate his own clerk immediately, and the patron should present, though after the expiration of his six months,

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the bishop is bound to institute the clerk whom the patron presents. If the bishop suffers the presentation to lapse to the archbishop, the patron has also the same advantage, if he present before the archbishop has filled the living; but the bishop has no such privilege in prejudice to the archbishop: but should the presentation lapse to the King, the patron loses this advantage. Lest the King, however, should keep the church void, the patron may present; but even after institution, the King, by presenting another, may turn out the patron's clerk, or, after induction, may remove him.

Where a living becomes void by death, or cession through plurality of livings, the patron is bound to take notice of the avoidance, at his own peril: but, in case of vacancy by resignation, deprivation, or the clerk's being refused for insufficiency, the law obliges the bishop to give the patron notice, these matters being supposed to rest with the ordinary, or no lapse will take place; nor yet, if a bishop refuses or neglects to examine and admit the patron's clerk, without good reason assigned, or notice given; nor, where the right of presentation be contested, till the question of right be decided.

4. Simony is the presentation of any one to an ecclesiastical benefice for money, or reward, the penalty of which is a forfeiture of the right of presentation for that turn, to the crown. It is so called from Simon Magus, who offered money for the Holy Ghost; and what adds to the crime is, that it is always attended with perjury, the person presented being sworn to have committed no simony.

If any patron for any corrupt consideration, shall present or collate any person to an ecclesiastical benefice or dignity; such presentation shall be void, and the presentee be rendered incapable of ever enjoying the same benefice: and the crown shall present to it for that turn. But should the presentee die without being convicted of simony in his lifetime, the simoniacal contract shall not prejudice any other innocent patron, on pretence of lapse to the crown, or otherwise. Further, if any person for profit shall procure, in his own name, or the name of any other, the next presentation to any living, and shall be presented thereupon, this is declared to be a simoniacal contract, and the parties incur all the penalties of simony.

From these statutes simony is settled to be, 1. Purchasing a presentation, the living being vacant. 2. A clerk's bargaining for the next presentation, the incumbent being sick and about to die. 3. A clerk's buying, either in his own name,

name or another's, the next presentation, and being there-upon presented to the living, at some future time. But if a father purchases such a presentation for his son, it is not simony. If a simoniacal contract be made with the patron, the presentation for that turn shall devolve to the crown, but the clerk, who is innocent, incurs no disability or forfeiture.

5. The next kind of forfeitures are those by breach of such conditions as the estate is held by.

6. The next arises from waste, which is a destruction in houses, gardens, trees, or other corporeal hereditaments, to the injury of him that hath the reversion.

Whatever does a lasting damage to the inheritance is waste, whether it be done voluntarily or permissively, that is, whether we pull down a house or suffer it to fall; but, if it be destroyed by tempest, lightning, or the like, it is no waste. Removing wainscots, floors, or other things fixed to the freehold of a house is waste; also reducing the number of creatures in ponds, dove-houses, warrens, &c. so that there will not be sufficient for the reversioner. Cutting down timber, or topping and lopping them, so as to ruin the trees, is also waste; but the tenant, unless restrained by special covenants, may take sufficient timber for repair of the premises and farming implements. Converting land from one species to another, is also waste; for example, to turn meadow or pasture-land into arable, or to turn arable into wood-land; so likewise to open land, unopened before, in order to search for mines. And tenants for life, or for a less term, are liable to be punished for waste, unless their leases be made, *without impeachment of waste*. The punishment for waste in a guardian is single damages, and forfeiture of wardship; but, other tenants shall forfeit the place wherein the waste is committed, and also triple damages to him that hath the inheritance; but if waste, however, be done only in one end of a wood, that part only shall be forfeited to the reversioner.

7. Copyholds may also be forfeited to the lord, by breach of the customs of the manor.

8. Another, and the last method by which lands may be forfeited, is an act of bankruptcy. When a man is declared a bankrupt, the commissioners have full power to dispose of all his lands and hereditaments, and of all those that shall descend to him afterwards, before his debts are satisfied, and all those which were purchased by him jointly with his wife or children to his own use, or purchased with any other person upon secret trust for his own use, and divide the produce among his creditors.

V. The most customary method, however, of acquiring a title to estates is by alienation ; that is, conveyance, or purchase, in its limited sense, viz. by bargain or agreement, for money or otherwise ; whether it be by sale, gift, marriage-settlement, or will. Let us consider then the several modes of conveyance, and who are capable of selling and buying. And,

1st. All persons in possession of estates are capable of selling and buying, unless the law has in any measure restrained them. If a man has only a right of possession, he cannot convey ; he may sell, however, reversions, but cannot assign to a stranger contingencies and mere impossibilities, unless coupled with some present interest.

Persons attainted of treason, felony, and *præmunire*, are incapable of conveying from the time when the offence was committed ; for the King or lord shall not thus lose the forfeiture. Though they are disabled to hold, any estate falling to them will be forfeited in consequence of their crimes. Estates also purchased by corporations will be forfeited to the lord of the fee, unless they have a licence to hold in mortmain.

Idiots, lunatics, infants, and persons under confinement, are in some cases incapable either to convey or purchase. Where an idiot purchases an estate, and does not afterwards, on recovering his senses, agree to the purchase (though he cannot render such purchase null, by proving himself infane at the time) yet his heir may either reject or accept the estate at his option. The King indeed may render the act of an idiot of no validity ; and after his death, the next heir or person interested, may take advantage of his incapacity, and avoid any grant he may make. An infant also may refuse, when he comes of age, any purchase he may make during his minority ; or should he, when of age, not agree to it, his heirs may refuse it after his death. Persons likewise under confinement, may affirm or avoid such transactions, when their confinement ceases ; for the law will not suffer any one to be imposed upon. Guardians or committees, however, of a lunatic are empowered to renew in his right, under the directions of the court of Chancery, any lease for lives or years, and apply the profits to the use of the lunatic or his heirs.

A married woman may purchase an estate, without the consent of her husband ; but if he declares his dissent, the purchase is void : but notwithstanding he may consent to it, the woman, after the death of her husband, may continue it or reject it ; even her heirs, if she dies before her husband, and did nothing in her widowhood to declare her consent, may waive or reject it after her ;

her; but the conveyance or other contracts of a married woman (except by some matter of record) is absolutely void.

An alien is peculiarly circumstanced. He may purchase any thing, but can hold nothing that he purchases, except a lease of a house for merchandize; and not that, unless he be an alien-friend, that is, a foreigner with whose courts we are at peace. All other purchases are forfeited to the King.

Roman Catholics, above the age of eighteen, are also disabled from purchasing any lands, rents, or hereditaments; but under certain restrictions, such as taking the oaths of allegiance &c.

2. We will proceed next to the different modes of conveyance.

The legal evidences of conveyance of property, are called *common assurances*, and are of four kinds. 1. Deed; 2. Record; 3. Custom; and, 4. Will.

1. A deed is a writing sealed and delivered by the parties.

To make a deed valid, the person contracting must be capable of doing so; the deed must be founded on good and sufficient consideration; not upon a usurious contract; nor on fraud or collusion, nor to injure just creditors: a deed or grant made, without any consideration, is construed to be effectual only to the use of the grantor. Good considerations are those of relationship, or affection; as where a man grants an estate to his kinsman: those of money, marriage, or the like. A deed must also be written or printed on paper or parchment, with proper stamps or it cannot be given in evidence. In short, no lease or estate in land, or hereditaments (except leases, not exceeding three years from the making, and wherein the reserved rent is at least two-thirds of the real value) shall be looked upon as of greater force than a lease or estate at will; unless put in writing, and signed by the party granting, or his agent, lawfully authorized in writing.

A deed is good, though it has no date, or has even a false date; provided the real day of its being dated or delivered be proved. If it be not read at the request of any of the parties, it is void; in which case it shall bind only the fraudulent party. The party whose deed it is, must also, either by himself or his attorney, in order to make it good, seal, sign, and deliver it; and in order to preserve the evidence, this should be done in the presence of witnesses, who are to attest the same on the deed.

Upon every grant of an estate in freehold, and in hereditaments corporeal, whether of inheritance or for life only; corporal possession must be taken of the land.

This corporal possession is either in *deed* or *law*. That in *deed* is thus performed. The grantor, lessor, or his attorney, goes to the land or the house with the grantee, lessee, or his attorney, and there, in the presence of witnesses, declares the contents of the grant or lease of which livery is to be made, or possession given. If it be of land, the grantor delivers to the grantee, all other persons being off the ground, a clod or turf, or a twig there growing, with words to this effect, "I deliver these to you "in the name of seisin of all the lands and tenements contained in "this deed;" but if it be a house, the grantor must take the ring or latch of the door, the house being quite empty, and deliver it to the grantee in the same form; this done, the grantee is to enter the house alone, shut too the door, and then open it and let in who he pleases. Where lands are scattered up and down in the same county, livery or a delivery of any parcel, in the name of the whole, is sufficient; but where they lie in different counties, there must be a livery in each.

Livery in *law* is not made on the land, but in *sight of it* only; as I give you yonder land, enter and take possession. In this case, if the grantee enters and takes possession, during the life of the grantor, the livery is good, but not otherwise; unless he does not enter, for fear of bodily harm; in which case, a yearly claim made, as near the land as possible, will suffice.

In leases for years, the bare lease gives only a right to enter; an actual entry, therefore, is necessary to vest the estate in the lessee.

A parson or vicar, though he cannot grant longer leases, even with the consent of patron and ordinary, than for twenty-one years or three lives, cannot make any lease at all, so as to bind his successor, without obtaining such consent. And though leases contrary to these acts are declared void, yet if the lessor be a sole corporation, they hold good against him, and are also good against an aggregate corporation, so long as the head of it lives; for the act was made for the benefit of the successor only, and no man can benefit by his own wrong.

Leases granted by the beneficed clergy are further restrained by several statutes, for, if any beneficed clergyman be absent from his cure above eighty days in any one year, he shall not only forfeit one year's profit of his benefice, to be distributed among the poor of his parish, but all leases made by him of the profits of such benefice, and all covenants and agreements of like nature, shall cease and be void; except in the case of licensed pluralists, who may let the living in which they are non-resident to their curates, provided such curates do not absent themselves above forty days in any one year.

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With respect to *exchanges*; the estates to be exchanged must be of equal interest: that is, fee-simple for fee-simple; a lease of twenty years for a lease of twenty years, and the like. But no corporal possession, even in exchange of freehold, is necessary to complete the conveyance; but entry must be made on both sides, otherwise the exchange is void. When two beneficed clergymen, with the consent of patron and ordinary, exchange their livings, and the one is presented, instituted, and inducted, and the other presented and instituted, and dies before induction, the former shall not keep his new benefice, but shall return to his old one; because the exchange was not perfected. If, after an exchange, either party be thrown out of that estate he takes in exchange, through defect of the other's title, he shall return back to the possession of his own.

There are two kinds of deeds, not used to *convey* lands but to change them; these are bonds and recognizances.

A *bond* is a deed, whereby the obligor binds himself, his heirs, executors, and administrators to pay a certain sum of money to another at a day appointed, or to perform certain conditions under a penal sum specified.

Where the condition of a bond is, at the time of making it, impossible, or it be to do a thing contrary to some positive rule of law, or be uncertain or insensible, the condition alone is void, and the bond shall stand single and bind the obligor, for his folly, to pay the money without any condition. If it be to do a thing bad in itself, the obligation is void. If the condition be possible when the bond is given, and becomes afterwards impossible by the act of God, the act of law, or the act of the obligee himself, the penalty of the bond is saved. On the forfeiture of a bond, the courts of equity interfere, and will not (let the penalty be ever so great) permit the obligee to take more (if it be for payment of money) than his principal, interest, and expences, or the damages sustained, on breach of covenant; nay, in case of a bond, conditioned for the payment of money, the payment or tender of the principal sum due, with interest and costs, even though the bond be forfeited, and a suit commenced thereon, shall be a full satisfaction and discharge.

A *recognizance* is a bond of record, which a man enters into to do some particular act, such as to appear at the assizes, to pay a debt, &c. before a court of record or a magistrate properly authorized.

2. The next legal evidence of a conveyance of property is matter of record; depending not on the consent of the parties themselves, but on the sanction of a court of record. These are

private acts of parliament, King's grants, fines, and common recoveries.

Private acts of parliament. It sometimes happens, from various causes, that estates are so entangled, and circumstanced, as that the owners cannot be relieved by either of the courts of law or equity. In these cases, particular acts are passed to un-fetter them.

The King's grants, otherwise called *letters patent*: but these do not differ materially from the grant of a subject, only; 1. That a grant from the King, at the suit of the grantee, shall be construed as much as possible in favour of the King, whereas that of a subject is construed as much as possible against the grantor. On this account, the King's grants are not usually made at the suit of the grantee, but of the King's special grace; in which case they are construed more liberally. 2. The grant of a subject, is held to include many things (though not expressed) provided they be necessary for the operation of the grant; but not so with the King; for was the King to grant land to an alien, he could not hold it, the King's grant not making a denizen; for, should his grant be repugnant to law or reason, it is void.

The next species of assurance of record is what is called a fine and recovery: the effect of which, is to cut off entails, and it's explanation is of little moment but to a lawyer.

3. The third legal evidence of the conveyance of property, is special custom; but this is confined to copyhold lands. These are transferrable only in the court-baron of the lord, and is generally done by surrender to the steward of the court, to be again granted out by the lord to such persons, and to such uses as are named in the surrender, and as the custom of the manor warrants. Upon which admission, the new tenant pays a fine to the lord, and takes the oath of fealty. No deed or court of law will convey a copyhold estate, it must be surrendered: but, if the lord refuses to admit the person named in the surrender, the court of Chancery will compel him; and the lord, on his part, can oblige the person admitted to pay him his customary fine. If a copyhold estate is devised by will; the person to whom it is devised, is entitled to admission; he may even enter on the land before admission, take the profits, may punish any trespass done upon the ground, and, on satisfying the lord for his fine due upon the descent, may surrender into the hands of the lord, to whatever use he pleases.

4. The last method of conveying real property, is by devise or will. Certain restrictions were formerly laid on devises,

to prevent estates being given to religious-houses; but now, it is held, that a devise to a corporation, for a charitable use, is valid; as being rather an *appointment* than a *bequest*.

To prevent frauds in wills, it is enacted, That all devises of lands and tenements, shall not only be in writing, but signed by the testator, or some other person in his presence, and by his express direction, and be subscribed in his presence, by three or four credible witnesses. In the construction, however, of this statute, it is held, that the testator's name, written with his own hand, at the beginning of his will, as for example, "I " James Burns do make this my last will," is a sufficient signing, without any name at bottom: it hath also been determined, that though the witnesses must see the testator sign, or at least hear him acknowledge the signing, they may do it at different times; and, that witnesses to wills shall be disinterested, it is enjoined, that all legacies given to witnesses are void.

Having now considered the several kinds of conveyances, whereby titles to lands and tenements may pass from one to another, it may not be improper to subjoin a few general rules laid down by the courts, in the construction of such conveyances.

1. First then, the construction must be favourable and reasonable, and as agreeable to the intents of the parties as the rules of law will admit.
2. Where the intention is clear, too minute a stress shall not be laid on the signification of words.
3. Bad Latin, or ingrammatical English, shall not affect a deed.
4. Constructions shall be made on the whole deed, and not on any disjointed part of it.
5. Deeds shall be construed most strongly against the contractor.
6. Where words will bear two senses, one agreeable to the law, the other repugnant; the first shall be preferred.
7. Where two clauses clash with each other, the first shall be received; but, where the two clauses can be reconciled, it shall be done.
8. Wills shall be explained, to pursue, if possible, the intent of the testator.

Chap. Fourth. OF PERSONAL PROPERTY.

UNDER the idea of Personality, or things personal, are included all sorts of moveable things: but, under the general name of Chattels is included, not only things personal, but all such property as comes not under the denomination of estates:

estates: in short, all such property as has not yet been mentioned.

Now chattels are divided into two kinds, real and personal.

Real chattels are terms for years of land, presentation to churches, estates by statute merchant, statute staple, or the like. *Personal* chattels, then, are the only things as are moveable; for instance, animals, household furniture, money, jewels, cloaths, corn, &c. and in treating of these, we will consider the nature of this property, and how a title to it may be acquired or lost.

Property in personal chattels may be either in *possession*, or in *action*; that is, where a man has merely a right, without actual possession of the property.

I. Now property in possession, is of two kinds, *absolute* and *qualified*.

1. Property in possession absolute, is where a man hath, solely, not only the right, but also the use of any moveable chattels, such as goods, plate, money, jewels, cloaths, vegetables, &c. and domestic animals, such as horses, kine, sheep, swine, poultry, and the like.

2. Qualified property is such, as is not in its own nature permanent, but at times may subsist or not. For example, it may subsist in wild animals tamed by art, or in animals confined; such as, ferrets, hawks, deer in a park, hares or rabbits in a warren, fish in a private pond or trunks, &c. These are no longer a man's property, than while he has them in possession: if they stray away and do not return, it is lawful for any one to take them: but, if a deer, or any wild animal tamed, has a collar or mark put upon him, and is suffered to go and return at pleasure, or, if a wild swan be caught and marked, and turned loose in a river, the owner's property still continues, and it is unlawful for any one to take them; but otherwise, if a deer has been long absent, or the swan leaves the neighbourhood. Bees are of the wild kind, which a man has property in, if he hives them. If a strange swarm settles on a tree in my garden, I have no property in it, till I have hived it; if another hives it, it is his property; but, a swarm flying out of my hive is mine, while I can keep the bees in sight and pursue them. It is as much felony by Common Law, to steal such confined animals as are fit for food, as to steal tame ones; but not so, if they are kept only for pleasure, as is the case with cats, bears, parrots, singing-birds, and the like: their value depending on the caprice of the owner: an action will, however, lie for stealing these.

A qualified

A qualified property may also subsist in hawks, rooks, and other birds building in my trees, rabbits and other animals breeding and burrowing in my grounds: at least, till they are able to fly or run away, and then my property expires.

So a man may have a qualified property in wild animals, by privilege, as in that of game, which will be shewn hereafter.

Many other things also may be the objects of qualified property, as light, air, water, and the like, in which a man can have no permanent property: but, if a man obstructs my windows, corrupts the air of my house or gardens, fouls my water, lets it out, or diverts its course, the law will punish him.

II. Property in action, is where a man has not the possession, but merely a right to use the thing in question, and the possession of which he may recover by an action at law. Of this kind is money due on a bond, or due from any damage I may sustain; as by a man's breaking his covenants with me.

Titles to personal property are next to be considered, or the various methods of acquiring and losing it. These methods are as follow; 1. Occupancy; 2. Prerogative; 3. Forfeiture; 4. Custom; 5. Succession; 6. Marriage; 7. Judgment; 8. Gift, or grant; 9. Contract; 10. Bankruptcy; 11. Will; and, 12. Administration.

1. Occupancy then is one title. After a declaration of war, any one may seize to his own use such goods as belong to an alien enemy: (except such alien be resident in England,) and such goods as are brought by such alien into this country, without a safe-conduct or passport. If an enemy take the goods of an Englishman, and they should be afterwards retaken by another subject of this kingdom, the goods so retaken shall become the property of the retaker, on condition, that the goods retaken are brought into port and continue there a night, so as to take away all hope of recovery. A man may also acquire a kind of qualified property in the person of an enemy whom he shall take prisoner of war, and may demand a ransom.

Things found, and not claimed by any owner, become the property of the finder or first occupant; provided they do not come under the denomination of waifs, estrays, wreck, or hidden treasure, which belong to the crown.

The benefits of light, air, or water, may also be claimed by the first occupant. If my window originally overlooked the ground, which my neighbour thinks proper to take, he cannot obstruct the light: but, if I darken my house, by building it close to his wall, I cannot oblige him to remove that wall, the first

first occupancy, or prior right, being rather in him than in me. If he should set up any kind of manufactory, that may prove a nuisance to me, by corrupting the air or water, the law will yield me a remedy; but, if such manufactory was originally there, and I fix my habitation near it, it is a nuisance of my own seeking, and I have no remedy.

All kinds of animals, except whales, sturgeon, and game, are the property of the first taker, provided they are caught upon the territories of those who take them.

If, by any operation upon a thing, a person shall alter its very kind, he acquires a property in it by such alteration: for example, if he converts another man's fruit into wine, or his wheat into bread, the owner of the fruit or wheat shall have no claim on the wine or bread: but shall be paid merely for the fruit or wheat. If one man, however, takes away the wife or child of another, and cloaths them, the cloaths shall cease to be the property of the person who furnished them, the instant such wife or child is retaken by the husband or father; they being annexed to the person of the woman or child.

But in mixtures of goods, where one shall wilfully intermix his corn, hay, or other matters, with that of another person, without his approbation; the person so mixing them loses his property, and the other becomes the owner of it,

Under the title of occupancy, may be considered what is called literary property, viz. the right an author has in his own compositions; it being now settled, that the author and his assigns shall have the sole liberty of printing and reprinting his works for the term of fourteen years, but no longer; if at the end of that term, however, the author himself be living, the right shall then return to him for another term of the same duration; and a similar privilege is extended, for the term of twenty-eight years, to the inventors of prints and engravings. Patents of privilege are also granted by the King, for fourteen years, to the inventor of any new manufacture or machine, for the sole working or making the same, vesting thus a temporary property in the patentee.

II. Another method of acquiring property in personalis is, by the King's prerogative, whereby the King, or any other, under the title of the crown, may claim a right to them.

Of this kind are all tributes, taxes, and customs, whether being branches of the royal revenue, or settled by Acts of Parliament. Under this head may also be considered all forfeitures and fines.

In these different ways of acquiring property, the King, in
one

one entire thing, can have no *joint* property; but where the claim of the King and a subject join, the King shall have the whole; in the same manner, as where an estate is given to the King and a subject jointly, the King does not become a joint-tenant with the subject, for that would be below his dignity, but he will have the estate wholly to himself. If a bond be made to the King and a subject, the King shall have the whole penalty; or, if two persons have a joint debt owing to them on bond, and one of them assigns his part to the King, or is attainted, whereby his moiety is forfeited to the crown, the King shall have the entire debt; for it is a maxim in law, that the King shall never lose his right, and where the interest of a subject interferes with that of the King, the King's shall ever be preferred.

Prerogative gives the King a claim also to wrecks, waifs, estrays, treasure-trove, to whale, sturgeon, swans, and the like. Also, to a certain kind of copy-right: to the exclusive right of printing at his own prefs, or that of his grantees, all acts of Parliament, Proclamations, Orders of Council, the Bible, and Books of Common Prayer; and he is also said to have a right to the copies of such Law-books, Grammars, &c. as were compiled or translated at the expence of the crown.

The King has likewise a right to *game*, with an exclusive privilege of pursuing, taking, and destroying it; and no man but he who has a free-warren by grant from the crown, or prescription, which supposes such a grant, can justify sporting upon another man's soil; or, indeed, sporting at all. By the acquiescence of the crown, and the frequent grants of free-warren, by the introduction of modern penalties, and by certain statutes, for preserving the game, every man, qualified, as it is called, that is, exempted from these penalties, looks on himself at liberty to kill what game he pleases; whereas, he has, in fact, no power to kill game, unless he can shew that he is a free warrene, or authorized under some Act of Parliament. Owners of manors are empowered to appoint gamekeepers to kill game, for the use of such owners; but this *qualifies* no one except the gamekeeper. Modern qualifications of tool, a year, &c. are merely exemptions from penalties, but do not exempt those who kill game, from actions of trespass by the owner of the land; nor, if they kill game within the limits of any royal franchise, do they exempt them from the actions of such as have the right of free-warren therein. It is held, indeed, that if a man starts any game within his own grounds, and follows it into those of another, and kills it there, he has a property in what

what he so kills ; from the property continuing in his possession by the immediate pursuit. So, if a stranger starts game in one man's free-warren, and hunts it into the liberty of another, the property continues in the owner of the warren, for the stranger can have no property in it : or, if a man starts game on another's private ground, and kills it there, the property belongs to the owner of the ground ; but, if being started there, it be killed in the grounds of a third person ; it, in this case, becomes the property of the killer, though he is guilty of a trespass to both owners.

III. Forfeitures are a third method of acquiring personal property. These arise, as punishments for various crimes and misdemeanors : some of them are for offences, bad in themselves, or against the divine law ; but the greatest part are for offences against the laws of the land : we will confine ourselves, therefore, to those offences that incur a forfeiture of *all* the goods and chattels of the offender. Of partial forfeitures, a moiety frequently is the property of the informer, the poor, or other persons ; whereas, total forfeitures belong to the crown ; except in one instance, that of felony, in a bankrupt's concealing his effects ; in which case, alone, they belong to the creditors.

The goods and chattels of an offender are forfeited to the crown, by conviction of high treason, or misprision of treason : of petit-treason ; of felony in general ; and particularly of *felo-de-se*, and of manslaughter : nay, upon conviction of excusable homicide ; by outlawry for treason or felony ; by conviction of petit-larceny ; by flight in treason, even though the person be acquitted of the fact ; by standing mute, when arraigned of felony ; by drawing a weapon upon a judge ; or striking any one in the presence of the King's courts ; by *premunire* : by pretended prophecies, upon a second conviction ; by owing ; by the residing abroad of artificers ; and, by challenging to fight, on account of money won at gaming.

In real property, these forfeitures commence at the time of committing the fact ; but here, in personals, they take place only from the time of conviction ; yet a fraudulent conveyance of them, to defeat the interest of the crown, is void.

IV. A fourth method of acquiring personal property, is by the custom of some particular place ; or, by the general use of the nation. Were I to enter into all the local customs of the kingdom, the task would be almost endless ; it shall suffice,

then,

Then to mention three which prevail in most places, viz. hei-
ots, mortuaries, and hair-looms.

i. Heriots we have mentioned.

2. Mortuaries are a fee due to the minister of many parishes on the death of his parishioners, which is now settled, where mortuaries are paid, to be three shillings and four pence for every person who leaves goods to the value of ten marks, and not exceeding thirty pounds ; six shillings and eight pence for every person leaving thirty pounds, and not more than forty pounds ; and ten shillings for every person leaving upwards of forty pounds ; but no mortuary shall be paid for a married woman, a child, a person of full age, not a housekeeper ; nor for any wayfaring man ; but such wayfaring man's mortuary shall be paid to the parish to which he belongs.

3. Heir-looms are such goods and chattels, as by special customs, contrary to the nature of chattels, go, with the inheritance, to the heir at law, and not to the executor of the last proprietor : they are generally such things as cannot, without injury, be separated from the inheritance, as deer in an authorized park, fish in a pond, pigeons in a dove-cote, &c. otherwise the rule is, that such personals shall vest in the executor, though expressly given to a man and his heirs. Carriages and household furniture may be heir-looms, in places where there is a special custom to support it, but such custom must be proved ; but in general, fixtures of a house go with a house, such as chimney-pieces, fixed benches, pumps, &c. Monuments or tomb-stones, escutcheons, &c. are also heir-looms every where ; which the parson of the church cannot remove or deface, without being liable to an action from the heir. Pews also, by custom immemorial, may descend, without any ecclesiastical concurrence, from the ancestor to the heir : but the heir has no property in the dead bodies of his ancestors. The parson, as owner of the foil, may bring an action against any one that digs or disturbs the ground ; and whoever taking up a dead body, steals the shroud or grave-clothes, is guilty of felony ; the property of which being in the person who was at the expence of the funeral.

Heir-looks, though mere chattels, cannot be devived away from the heir by will; though the owner in his life-time might have either sold or destroyed them.

V. Another method of acquiring personal property is by succession. This right is universally inherent by Common Law in all aggregate corporations as dean and chapter, mayor and commonalty, master and fellows, and the like ; in the King, and in such single corporations as represent a number of persons ; for example, the master of an hospital, who represents the poor

brethren ; or the dean of some cathedral, who represents the chapter ; but this right may, by special custom, belong to certain other sole corporations, for some particular purposes, as to the chamberlain of London, who is a sole corporation for the benefit of the orphan's fund ; but generally in sole corporations no such right can exist.

Chattels left therefore to such a corporation, though their successors be not named, vests an absolute property in them, so long as the corporation subsists. But if chattels be devised to sole corporations, as to the bishop of London and his successors, or the rector of any place and his successors, in such case their executors or administrators shall have them, and not the successors. The King, as a sole corporation, is an exception to this rule, in whom a chattel interest, given to a preceding King, and his successors, shall vest.

VI. A sixth method of acquiring chattels is by Marriage, all personal property belonging to the wife before marriage, being absolutely vested in the husband by marriage. In real estates the husband gains only a title to the rents and profits during the time she is his wife ; but in chattel interests the husband has the absolute disposal of them, if he chooses to take possession of them ; but unless he takes such possession, by exercising same act of ownership upon them ; they shall become, at the dissolution of the marriage, the property of the wife or her representative.

A real chattel of the wife, by marriage, vests in the husband, but not absolutely ; as in the case of a lease for years, the husband is entitled to all the rents and profits of it, and may, if he pleases, sell, surrender, or dispose of it, during the coverture or the time she is his wife ; if he be outlawed or attainted, it shall be forfeited to the King ; it is liable to execution for his debts ; and, if he survives his wife, it is, to all intents and purposes, his own. Yet if he has made no disposition of it, and dies before his wife, he cannot dispose of it by will, nor does it go to his executors, but remains vested in his wife, and at her disposal. In manner all debts due to the wife before marriage, if not sued for and recovered by the husband, shall, after his death, be the property of his widow ; but upon the husband's receiving them in his life-time, he may dispose of them at his death as he pleases. But in case the husband shall survive the wife, he can claim a real chattel, by survivorship, but not money due to the wife before marriage, except it be arrears of rent, which, in case of her death, are given to the husband. He may, however, as her administrator, recover any money that was due to her before marriage. With respect to personal chattels which the wife has in her possession,

possession, as money, jewels, furniture, and the like, the husband has, by the marriage, an absolute and immediate property vested in him, which can never afterwards revert in the wife or her representatives.

Such things as are called the wife's *paraphernalia*, the widow is entitled to, on the death of her husband; and he cannot bequeath them away by his will; though, during his life, he had power to sell them or give them away. If she continues to wear them till his death, she can keep them, in opposition to his executors, administrators, and all other persons, except creditors, where there are not assets sufficient to pay his debts. Now these *paraphernalia* are the apparel and ornaments of a wife, suitable to her rank and degree: the jewels of a peeress, usually worn by her, are held to fall under this description.

VII. A Judgment in a court of law, in consequence of suit or action, is another mode of acquiring personal property. I mean judgment given in favor of penalties inflicted by particular statutes, the whole, or a moiety of which goes to the prosecutor or informer.

Damages given by a jury for any injury sustained, is another species of property acquired by judgment. Here also, as in the foregoing, the plaintiff has no claim till after a verdict. Costs of suit likewise come under the same denomination, and may be considered as an acquisition made by judgment of law.

VIII. An eighth mode of acquiring personal property is by Gift or Grant. Gifts are always gratuitous; grants are upon some consideration.

Grants, or gifts of *personal chattels* may be executed in writing or by word of mouth, before sufficient witness, and possession given in consequence of it. But such a conveyance, if merely voluntary, where creditors or others suffer thereby, is construed as fraudulent.

A proper gift or grant is always accompanied with delivery of possession. If one man gives another a horse or fifty pounds, and puts him in immediate possession, the donor has executed his gift, and has no power to retract it, though he did it without a recompence, unless it prove prejudicial to creditors, or that the donor was under any legal incapacity, as being minor, a married woman, in confinement, or the like, or unless he were drawn in, or imposed upon by false pretences, drunkenness, or surprise. But, should the possession of the gift be not immediately given, it is not properly a gift but a contract, which the donor is not bound to perform, but on a good and sufficient consideration.

IX. In all contracts three things are to be weighed, *viz.* the agreement, the consideration, and the different species of contracts.

In an agreement, the contracting parties must be in a capacity to make it. And

The contract may be either *express* or implied. *Express* contracts are where the terms of the agreement are particularly specified; as to pay a sum of money, to deliver a horse, or to pay such a price for goods: *implied*, are such as reason dictate; as where a man contracts to do certain work for me, the law implies, that I contracted to pay him a fair price for that work; if the work be not well executed, the law also implies, that I shall be entitled to any damages, I may sustain thereby.

The consideration is the price or motive of the contract, and must be a thing lawful in itself, or the contract is void. A good consideration, as we before have seen, is that of blood, or natural affection, between near relations; which may, however, sometimes be set aside, when it tends to defraud creditors, or others, of their just rights. But a contract for any *valuable* consideration, as for marriage, for money, work done or to be done, or the like, if the value be sufficient, can never be set aside, even in equity.

An agreement or contract to do or pay any thing on one side, without any compensation on the other, is totally void in law, however the contractor may think himself bound in honour or conscience to perform it; but bonds given to pay money, and promissory notes, though no consideration can be proved, are binding on the giver, yet not to the prejudice of creditors, or strangers to the contract.

Let us next consider the different species of contracts. These are, 1. Sale; 2. Delivery of goods in trust; 3. Hiring and Borrowing; and, 4. Debt.

1. Any man may sell his property, unless judgment has been obtained against him for a debt or damages, and the writ of execution is actually delivered to the sheriff; in which case, the property of goods shall be bound to answer the debt, from the time of delivering the writ: nay, if a defendant dies after the awarding of the writ, and before its delivery to the sheriff, his goods, in the hands of the executors, are bound by it.

If a man agrees with another for goods, he may not carry them away till he has paid for them, unless with the consent of the seller: but, if the price be agreed for, and the bargain struck, neither are at liberty to be off, provided the goods be tendered by the seller or the money by the buyer; but, if neither

neither money be paid, the goods delivered, nor the tender made, it is no contract, and the owner may dispose of them as he pleases. If any part, however, of the price be paid, or any portion of the goods be delivered, as *earnest*, the contract is binding. Indeed, no contract for the sale of goods, to the value of ten pounds and more, is valid, unless the buyer actually receives part of the goods sold, by the way of earnest, or unless he gives part of the price to the vendor, by way of earnest, to bind the bargain, or in part of payment; or unless some note in writing be made and signed by the party or his agent, who is to be charged with the contract. And with regard to goods under the value of ten pounds, no contract for the sale of them shall be valid, unless the goods are to be delivered within one year, or unless the contract be made in writing, and signed by the party who is to be charged therewith.

The bargain being struck, if the buyer tenders the money to the seller, he may seize the goods, or bring an action against the vendor for the recovery of them.

But property may in some cases be transferred by sale, tho' the goods be not the property of the seller: hence it is incumbent on the buyer to be cautious. Indeed, all sales and contracts of any thing saleable, in fairs or open markets, in law, is not only good between the parties, but will be binding on all those who have any right or property therein. Country markets are held on particular days, and on particular spots; but every day in London is market-day, except Sunday, and every shop in which goods are exposed to sale is a market for such articles as the shopkeeper professes to deal in; but, if a man's goods are stolen, and sold out of open market, he may take them, find them where he may; and it is expressly provided, that the sale of any goods, wrongfully taken to any pawnbroker in London, or within two miles thereof, shall not alter the property; and even in open markets, if the goods sold be the property of the King, such sale will no way bind him, though it binds minors, married women, idiots, or lunatics, and men beyond sea or in prison; or if the goods be stolen from a subject, and then taken from the felon by the King's officer, and sold in open market: still, if the owner has used all diligence in prosecuting of the thief to conviction, he does not lose his property in the goods. So likewise, if the buyer knows the property not to be in the seller, or there be any fraud in the transaction; if he knows the seller to be under age, or a married woman not trading for herself; if the sale be not originally and wholly in a fair or market, or not the usual hours, the owner's property is not bound there-

by : if a man buys his own goods in a fair or market, the contract of sale shall not oblige him to pay the price, unless the property had been before altered by a former sale ; and, notwithstanding any number of intervening sales, if the original seller, who sold without having the property, comes again into possession of the goods, the original owner may take them, when found in his hands who was guilty of the first breach of justice.

In horses, indeed, the property is not easily altered by sale, without the express consent of the owner. For a purchaser cannot claim a horse that has been stolen, unless it be bought in an open fair or market, and the colour, marks and price of the horse, with the buyer's and seller's names entered in the market book. Nor shall such sale take away the property of the owner, if, within six months after the horse is stolen, he puts in his claim before some magistrate, where the horse shall be found ; and within forty days more proves such his property, by the oath of two witnesses, and tenders to the person in possession such price as he, *bona fide*, paid for him in open market.

In law, the buyer may demand from the seller a satisfaction that the goods are his own property; but the vendor is not bound to answer for the goodness of the wares he sells, unless he expressly warrants them to be found and good, or unless he knew them to be otherwise, or hath used any art to disguise them ; or unless they turn out different from what he represents them.

2. A delivery of goods in trust, upon an expected or implied contract, that the trust shall be faithfully executed on the part of the person to whom they are delivered, is called in law a *bailment*; as, if linen be delivered to a sempstress to make into shirts, she has it on an implied contract to return it made up properly. If goods be delivered to a carrier, he is under an implied contract to carry them to the person to whom they are directed. If a horse or other goods be delivered to an innkeeper or his servant, he is answerable for them ; nay, he shall answer for them, if stolen within the inn, though not delivered to his care, and though he was not acquainted that the guests brought the goods there ; nay, though he should even tell his guest to take the key of his chamber and lock his door, for that he would not be answerable for them. So if he puts a horse to pasture, without the direction of his guest, and the horse is stolen, he must make satisfaction, (but otherwise, if with his direction.) If one friend delivers to another any thing to keep for him, the receiver is bound to restore it on demand ; but, in this case, should the thing delivered be lost or injured, he is not bound

bound to make it good, unless such loss or injury arises from some gross neglect.

The property being thus put into the possession of the person to whom it is delivered, that person may maintain an action against any one that shall injure it, or take it away.

3. Hiring or Borrowing are also contracts by which a qualified property may be transferred to the hirer or borrower; both being under an implied engagement to return the thing hired or borrowed at the time specified. Under this head, I am led to speak of the interest usually paid for the loan of money.

The legal interest is five *per centum, per annum*, which lenders are authorised to take on personal or real security. They cannot take more without incurring the penalties of usury. They frequently take less on mortgage or land security, but never legally can take more, except on what is called Bottomry or *Respondentia*; policies of insurance; or annuities upon lives.

1st. Bottomry is in the nature of a mortgage of a ship, when the owner borrows money to enable him to proceed on his voyage, and pledges the keel or bottom of the ship to the lender, as a security for the repayment of the money on his return. Here it is understood, that if the ship be lost, the lender loses his whole money; if it returns, he receives back his principal, and the interest agreed on, which, on account of the hazard the lender runs, is allowed to be more than the legal interest. These terms are also now applied to contracts for the payment of money borrowed, not on the ship and lading only, but on the mere hazard of the voyage itself, except on ships to and from the East Indies, and of course the lender expects a larger than the legal interest.

2dly. Policies of insurance are contracted between two persons, suppose A and B; where, upon A's paying to B a *premium* or sum equivalent to the hazard run, B will indemnify him, or insure him, against any loss. Thus too, in a loan, if the chance of repayment depends on the life of the borrower, it is usual (besides the common rate of interest) for the borrower to insure his life till the repayment: which generally costs him five *per cent.* or more, according to his age and constitution, which, added to the five *per cent.* he pays for the money, makes the interest he pays ten *per cent.* In order, however, to prevent these insurances from becoming a mischievous kind of gaming, it is enacted, that no insurance shall be made on lives, or any other event, wherein the party insured hath no interest: that in all policies, the name of such interested party shall be inserted, and nothing

more

more shall be recovered thereon, than the amount of the interest insured.

3dly. The practice of purchasing annuities for lives at a given price, instead of advancing the same sum by way of loan, takes its rise from the inability of the borrower, to give the lender a permanent security to repay the money at any fixed period. He therefore engages, for the sum he wants, to pay so much a year as shall be agreed on, as long as he lives, or till he repays the money; and this annual sum or annuity is more or less, according to the age and constitution of the borrower. To check, however, any usurious dealings in this business, it is enacted, that on the sale of any life-annuity, of more than the value of ten pounds *per annum*, (unless on a sufficient pledge of lands in fee-simple, or flock in the public funds,) the true consideration shall be set forth and described in the security itself, and a memorial of the date of the security, of the names of the parties, for whose use it is, and on whose life it is, and the witnesses, and of the consideration money, shall, within twenty days after its execution, be inrolled in the Court of Chancery; else the security shall be null and void; and in case of collusive practices, respecting the consideration, the court, in which any action is brought, or judgment obtained upon such collusive security, may order the same to be cancelled, and the judgment, (if any,) to be vacated. And all contracts for the purchase of annuities from infants shall remain utterly void and incapable of confirmation, after such infants arrive to the age of maturity.

4. The last species of contract, is that of Debt; of which there are three kinds, 1. Debts of record, or money due by the decree of a court of law; 2. Special debts, or money due by deed, or instrument under seal, as bond debts, debts of covenant, debts by deed of sale, or by lease reserving rent; and, 3. Simple contract debts, such as hook-debts, verbal promises, promissory notes and bills of exchange. A verbal promise, with sufficient witness, will create a simple contract debt; but no executor or administrator shall be charged upon any special promise, to answer damages out of his own estate; and no person shall be charged upon any promise to answer for the debt or default of another; or, upon any agreement in consideration of marriage, or upon any contracts, or sale of any real estate, or upon any agreement that is not to be performed within one year from the making; unless the agreement be in writing, and signed by the party himself, or by his authority.

A bill

A bill of exchange is a draught for money, requesting the person drawn upon to pay a certain sum to a third person specified therein. These bills are either *foreign* or *inland*; *foreign*, when drawn by a merchant residing abroad, upon his correspondent in England; and *vice versa*; *inland*, when both the drawer and the person drawn upon reside within the kingdom.

Promissory notes, are engagements in writing, to pay a sum specified, at the time therein limited, to a person therein named, or his order, or sometimes to the bearer at large. These are, like bills of exchange, made assignable, by the persons (to whom they are made payable) indorsing them, that is, writing his name on the back. But all promissory notes, bills of exchange, draughts, and undertakings in writing, being negotiable or transferrable, for the payment of less than twenty shillings, are void, and it is penal to utter or publish any such; and further, all such notes, bills, draughts, and undertakings, to the amount of twenty shillings, and under five pounds, are subjected to certain regulations and forms, without an attention to which they become void, and penal to the person that utters them, and they must be written upon stamped paper.

A promissory note, payable to A or *bearer*, is negotiable without endorsement, and payment of it may be demanded by any bearer. But, in a bill of exchange, the person to whom it is made payable must go to the person the bill is drawn upon for his acceptance of it; which, if accepted, either verbally or in writing, (the general way is to say *accepted* on the face of the bill,) the acceptor makes himself liable to pay it. If he refuses to accept it, and it be of the value of twenty pounds and upwards, and expressed in the bill *for value received*, it must be protested by some notary-public, resident in the place, or by some substantial inhabitant, witnessed by two persons; that is, proof must be made of the acceptance being refused, in which case, it must be returned to the drawer, with notice of such protest, within the space of fourteen days after:

If accepted, and the acceptor refuses or fails to pay it within three days after it becomes due, it must also be protested in the mode above described; in which case the drawer or the indorser is bound to pay it, with all expences attending it; but, if no protest be made, or notified to the drawer, and any damage arises, the holder of the bill must abide by the loss himself.

If the bill be an indorsed bill, the holder, if he cannot get the person it is drawn on to pay it, may demand the money.

money either of the indorser or the drawer; or if there are more indorsers than one, of any of the indorsers; but, the first indorser has no one to resort to but the drawer.

What has been said of bills of exchange is applicable to promissory notes, only, as in a promissory note there is no drawer, it is not necessary to protest it on payment being refused.

Bankruptcy is another mode of acquiring personal property. How the *real estate* of a bankrupt, may be transferred, has been shewn, we have only to consider the personal estate,

By the bankrupt laws, all the bankrupt's effects, and all the money owing to him are, by the commissioners, vested in the future assignees of his commission, and the commissioners by their warrant may cause any house of the bankrupt to be broke open, in order to seize them: and when the assignees are chosen by the creditors, the commissioners are to assign all over to them. But as acts of bankruptcy may be known only to a few, it is enacted, that no money paid by a bankrupt to a real creditor in a course of trade, even after an act of bankruptcy done, shall be liable to be refunded: nor, shall any debtor of a bankrupt, that pays him his debt, without knowing of his bankruptcy, be liable to account for it again.

XI. XII. There yet remains two other means of acquiring personal property; Testament and Administration, which shall be treated of jointly. And here we will consider, 1. Who is capable of making a last will or testament; 2. The nature of a will and its incidents; 3. What are executors and administrators; and 4. What their principal office and duty.

1. Every person has full power to make a will, unless under some special prohibition by law or custom; such as, for want of discretion; want of liberty and free-will; or on account of criminal conduct.

Under the first, are minors, if males, under fourteen: if females, under twelve; madmen, idiots, persons grown childish, those whose senses are besotted with drunkenness; and all persons born deaf, dumb, and blind.

Under the second are prisoners, captives, and the like, provided their confinement is supposed to destroy their free-will; also married women, without their husbands' consent; (the queen-consort excepted,) or unless their wills relate merely to such things as they possess, under the office of executrix or administratrix, which can never be the property of the husband; or unless the property bequeathed be the savings of their pin-money or separate maintenance. And if a single woman makes her

her will, and afterwards marries, such marriage makes the will void.

Under the third incapacity, are all traitors and felons, from the time of their conviction, their property being forfeited to the King; all self-murderers, who can only devite their lands, their chattels being forfeited; and outlaws also, so long as their outlawry subsists; for during that time their effects are forfeited.

2. Wills are of two sorts, *written* and *verbal*; a *codicil*, being only a supplement to a will.

A written will of personal property, written in the testator's own hand, though it has neither his name nor seal to it, nor witnessed, provided the hand-writing can be proved, is good, and though written by another, and not signed by the testator, yet, if proved to be according to his instructions, and proved by him, is a good will of personal estate.

Verbal or nuncupative wills or codicils being liable to great impositions, it is enacted, That no written will shall be revoked or altered by a subsequent nuncupative one, except the same be in the life-time of the testator reduced to writing, and read over to him and approved; and unless the same be proved to have been so done by the oaths of three witnesses, such as are admissible upon trials at Common Law: That no nuncupative will shall in any wise be good, where the estate bequeathed exceeds thirty pounds, unless proved by three such witnesses, present at the making thereof, and unless they or some of them were specially required to be witnesses thereto by the testator himself; and unless it was made in his last sickness, in his own dwelling-house, or where he had been previously resident ten days, except he be surprised with sickness on a journey, or from home, and dies without returning to his dwelling. That no nuncupative will shall be proved by the witnesses after six months from the making, unless it were put in writing within six days: nor shall it be proved till fourteen days after the death of the testator, nor till process hath first issued, to call in the widow or next of kin to contest it, if they think proper.

Wills are of no validity if made by a person labouring under any of the incapacities before-mentioned; if a will of a later date be proved, or if the will made be afterwards revoked or cancelled. Even without an express revocation, if a man who hath made his will, afterwards marries and has a child, this, in law, is an implied revocation of the will made when he was single.

3. We are next to consider what are Executors and Administrators.

An executor is the person to whom a testator commits by will

the

the execution of his will. And not only persons that are capable of making a will themselves, are capable of being executors, but also married women and infants, nay infants unborn, in the womb of their mother; but no infants can act before seventeen years of age, till which time administration must be granted to some other; so must it, if the executor be abroad, or while the validity of the will is in contest. But where a will is made, and no executor named, or if incapable persons are nominated, or executors refuse to act; the bishop of the diocese must grant administration to some other person; in which case the duty of an administrator differs little from that of an executor.

Where a man dies intestate, the Ordinary or diocesan is,
 1. obliged to grant administration of the effects of the wife, to the husband, or his representative, and of the husband's effects to the widow or next of kin; but he may grant it to either or both, as he pleases. 2. Among the relations he must prefer those that are nearest of kin to the deceased; but of persons of equal kindred, he may appoint whom he thinks proper. 3. Where none of the relations will administer, a creditor by custom, may do it. 4. If the executor refuses or dies intestate, administration may be granted to the residuary legatee, in exclusion of the next of kin; and in defect of all these, the Ordinary may grant administration to any person he pleases. If a bastard, or any one without kindred, dies intestate, and without wife or child; any person procuring authority from the Crown, may oblige the Ordinary to grant him administration.

4. Let us now enquire into the chief duties of an executor or administrator: which are much the same in both; only that the executor is bound to perform a will, which an administrator is not, unless where a testament is annexed to his administration. An executor may also do many acts before he proves the will, which an administrator cannot, an administrator deriving his power not from the will, but the probate, and the appointment of the Ordinary. If a stranger takes upon him to act as executor by intermeddling in the affairs of the deceased, without authority, he is liable to all the trouble of an executorship without any of the advantages; but merely doing necessary or humane acts, such as locking up the effects, or burying the corps, is not taking up the office of an executor. Such a one cannot bring an action himself, in right of the deceased, but actions may be brought against him. He is liable to pay the debts of the deceased as far as he has in hand assets sufficient, and shall be allowed in his account all payments made to any creditor except himself, provided such payments are made to creditors of the same or a superior

perior degree to those unpaid, as will be explained below; and though he cannot plead such payment against the demand of a rightful executor or administrator, yet it shall be allowed him in litigation of damages; unless perhaps where there are not sufficient assets left to pay that rightful executor.

The duty of a rightful executor or administrator is to bury the deceased in a manner suitable to the property he leaves. Necessary funeral expences are first allowed: if he is extravagant in his funeral, it shall be only prejudicial to himself, and not to the creditor or legatees of the deceased, for they must be first paid before any extravagance be allowed. He must also prove the will of the deceased, by swearing to it before the ordinary or his surrogate, or where its validity be disputed, by bringing witnesses; the certificate given of this proof is called the *Probate*. The executor or administrator is also, if required by the ordinary, to make an inventory of the goods and chattels of the deceased, and deliver it in to him upon oath. He is to collect all the effects so inventoried, and has the same property in them as the principal had when living, and the same remedies to recover them. In case of two or more executors, a sale or release by one binds the rest; but not so in case of two administrators. All such goods and chattels as are saleable, and can be converted into money, are called *Affees*, and, as far as these will go, the executor or administrator is liable to pay a creditor or legatee. He may convert them into money for that purpose. In paying debts he must observe the rules of priority, otherwise, where there are not assets sufficient, if he pays debts of a lower nature first, he must pay those of a higher out of his own property. After paying all funeral charges, and the expenses of the probate, and the like, he must pay debts due to the King in record or specialty; then such as are by particular statutes to be preferred to all others, as forfeitures for not burying in woollen, money due for poor's-rates, for letters to the post-office, and some others; then debts of record, such as judgments, statutes, and recognizances; then debts due on special contract, such as rent, bond-debts, covenants, and the like, under seal; then servants wages; and, lastly, all simple contract debts, such as book-debts, promissory notes, bills of exchange, and verbal promises. Of all debts of equal degree, he may pay himself first, provided he is the rightful executor or administrator, notwithstanding. If a creditor appoints a debtor to be his executor, he, in this act, discharges the debt, whether the executor acts or no, provided there be assets sufficient to pay his debts. If no suit be commenced against the executor, he may pay any one creditor in equal degree his whole debt, though he had nothing

left for the rest; as without a suit commenced, the executor has no legal notice of the debt.

The debts all discharged; the legacies are next to be paid, as far as the assets will extend: but the executor or administrator cannot, as in the case of debts, pay himself first. Where there is a deficiency of assets all the *general* legacies must abate proportionably, but a *specific* legacy (of a piece of plate, a horse, or the like) is not to abate at all, unless there be not sufficient to pay the debts. Where legacies are even paid, the legatees are bound to refund in proportion, if debts, unknown before, come in, in order to pay them.

Where the legatee dies before the testator, the legacy is lost or lapsed, and shall go to the general stock. If a legacy be left to any one *when* he attains, or *if* he attains, the age of twenty-one, and he dies before that age, it is a lapsed legacy; but if it be left *to be paid* when he attains the age of twenty-one, it is a vested legacy, and if the legatee dies before that age, his representatives shall receive it out of the testator's personal estate, at the time it would have been payable had the legatee lived. But if such legacies be charged on a real estate, in both cases they shall lapse for the benefit of the heir. In vested legacies due immediately, and charged on land or money in the funds, interest shall be payable thereon from the testator's death; if charged only on the personal estate, which cannot be immediately got in, they shall bear interest only from the end of the year after the death of the testator.

Nothing given as a legacy can be taken by the legatees, without the consent of the executor or administrator; except a person in his last moments should deliver or cause to be delivered to another, to keep, in case of his decease, the possession of any personal goods, bonds, or bills drawn by the deceased upon his banker: yet even these gifts shall not prevail against creditors.

All debts and legacies being discharged, the surplus, if any, must be paid to the residuary legatee, if any be appointed in the will; if not, it shall be the property of the executor, provided he has no legacy left him, and there appears nothing on the face of the will to imply the contrary: otherwise, it shall go to the next of kin, as it would, was there only an administrator. With respect to the property of an intestate, where no will is made, after his debts are paid, it is enacted, That the surplus, (unless the intestate be a married woman) shall, after the expiration of one full year from the death of the intestate, be distributed in the following manner: One third shall go to the widow, and the residue in equal proportions to his children, or

if dead, to their representatives; if no widow, the whole shall go to the children; if no children, the whole shall be distributed among the next of kin in equal degree, and their representatives: but no representatives are admitted among collaterals, farther than the children of the intestate's brothers and sisters. The father succeeds to all the personal effects of his children dying intestate and without issue, in exclusion of the brothers and sisters of the deceased: but if the father be dead and the mother alive, the personal effects of such children shall go equally to the mother and her remaining sons and daughters or their representatives.

In another part of the statute of distributions, it is directed, that no children or child of the intestate (except his heir at law) on whom he settled in his life-time any estate in lands, or pecuniary portion equal to the distributed shares of the other children, shall have any part of the surpluage with their brothers and sisters; but if the estates so given them, by way of advancement, are not quite equivalent to the other shares, the children so advanced shall now have so much as will make them equal. This statute, however, expressly excepts the custom of the city of London, the province of York, and other places having peculiar customs.

In the city of London and province of York, and in the kingdom of Scotland, the personal estate of an intestate, after payment of his debts, is distributed as follows. If the deceased leaves a widow and children, his effects (deducting the widow's apparel, and the furniture of her chamber, which are her own) are divided into three parts, one of which shall go to the widow, another to the children, and a third to the administrator: if only a widow, or only children, the widow or children shall have one half, and the administrator the other: if neither widow nor child, the administrator shall have the whole. But it is likewise ordained by statute, that the administrator's part shall also be distributed. The distribution is thus: The personal estate of a man dying intestate, and leaving a widow and two children, shall be divided into eighteen parts, of which the widow shall have eight; that is, six by the custom, and two by the statute; and each of the children five; that is, three by the custom, and two by the statute. If he leaves a widow and one child, she shall still have eight parts as before, and the child shall have ten; that is, six by the custom, and four by the statute: if he leaves a widow and no child, the widow shall have three fourths of the whole, that is, two fourths by the custom, and one by the statute; and the remaining fourth shall

go to the next of kin. But, if the wife be provided for by a jointure before marriage, in bar of her customary part, she shall be entitled to her share of the administrator's part, unless barred by special agreement. And if any of the children are advanced by their father, in his life-time, with any sum of money (not amounting to their full proportionable part) unless such children consent to divide the money so advanced with the rest of the brothers and sisters, in equal proportions with the remainder of the property to be divided among them, they shall not be entitled to any benefit under the custom: and if they are fully advanced, the custom entitles them to no farther dividend. So far the customs of London and York agree. But,

In London the share of the children is not fully vested in them till the age of twenty-one; nor can they dispose of it by will before; and if they die under that age, single or married, their share shall devolve to the other children. And in the province of York, the heir at common law, who inherits any land, is excluded from any child's part.



BOOK III.

B O O K III.

ON PRIVATE INJURIES.

Chap. First.

OF SELF REDRESS, AND REDRESS BY THE
OPERATION OF LAW.

HAVING considered the *rights* of persons and things, we will now proceed to their *wrongs* or injuries.

Wrongs are of two species, *private* and *public*. Private wrongs are an infringement of the rights of individuals, and therefore called *civil injuries*; public wrongs are a violation of public rights, and are called *crimes* and *misdemeanors*. Civil injuries then shall be the subject of this book; crimes and misdemeanors, of the concluding one.

To redress civil injuries, courts of justice are established, and our remedies are by applying to these courts: our business, therefore, here, will be to enquire how this is to be done. Some injuries then may be redressed by the parties themselves; and others by suit or action in courts. We will speak at present of the first.

I. Some injuries then we are allowed to redress, ourselves, as in self-defence, or the reciprocal defence of husband and wife, parent and children, master and servant. If a man, or any

of these his relations, be forcibly attacked in their persons or properties, it is lawful for him to repel force by force; but care must be taken, that the resistance a man makes does not exceed the bounds of mere defence, lest he should thus become a transgressor.

II. Reprisal is another species of self-redress, which the law allows a man occasionally to take. Where any one is deprived of his personal property, or where a man's wife, child, or servant is wrongfully detained from him, he may lawfully retake them, find them where he may; so as it be not in a riotous manner; for was a man, in such a case, to wait for a legal remedy, it might be impossible to recover them without their or his receiving some injury. If my horse be taken away, and I find him in a common, or fair, or public inn, I may legally seize him: but I cannot justify the breaking open a private stable, or entering on the grounds of a third person to take him, unless he be stolen; but must have recourse to an action at law.

Where one person has, without any right, taken possession of another's estate, forcible entry by the injured party to recover it, is, on some occasions, allowed; but as there are nice cases, we shall speak more of them hereafter.

III. A third species of redress, which the law allows a man to take himself, is in the removal of nuisances, of which, likewise, we shall speak more hereafter; I shall only observe at present, that whatsoever annoys or injures another is a nuisance, and the party aggrieved is justifiable in removing such an offence, if he can do it without committing a riot. He may, for example, enter his neighbour's ground, and peaceably pull down a wall erected so near him as to darken such of his windows as have subsisted time out of mind. If a new gate be erected across a public highway, it is a common nuisance, and any person passing that way may cut it or break it down; for, such injuries the law supposes to require an immediate redress.

IV. The next case where the law allows a man to be his own avenger, is that of distreining cattle or goods for arrears of rent, or trespassing upon his lands. And here, as the law of distress is proper to be thoroughly known, we will consider it minutely, and enquire, for what injuries a man may distrein; what things he may take, and the manner of taking, disposing of, or remedying distresses.

The lord of a manor may distrein for a man's neglecting to do suit to his court: distress may be had for fines in a court-leet. The owner of land may distrein any strange cattle he finds

finds wandering in his grounds and doing him damage. Remedy by distress and sale is given also for several duties and penalties inflicted by special acts of parliament.

Valuable things, not belonging to the transgressor, but in his possession merely by way of trade, shall not be liable to distress; such as a horse standing at an inn, or in a smith's shop to be shod, corn sent to a mill, or cloth to a taylor; but, generally speaking, whatever goods and chattels the landlord finds upon the premises, whether they belong to his tenant or lodger, he may distrain them for rent, and the lodger has his remedy only by action against the tenant. So cattle put out to pasture, or strangers' cattle trespassing upon land, may be distrained by the landlord of that land, for any rent the tenant may be in arrear, and the stranger hath his remedy against the tenant; but if the fences of such land be bad, and strangers' cattle stray into the ground, the landlord cannot distrain them, unless they have been in one night; but was it the landlord's or tenant's business to repair such fences, and they neglected to do it, the landlord could not distrain them, till notice be given to the owner that they are there, and he neglects to remove them. A man's tools and utensils of his trade are also privileged from distress. And further, nothing is liable to be distrained, that cannot be returned in as good condition as when it was taken, such as milk, fruit, and the like; a distress being, in the nature of a pledge or security, to be returned when the debt is paid. Landlords are empowered to distrain corn, grafts, or other products of the earth, while growing, and to cut and gather them when ripe.

Should the tenant's goods be clandestinely removed off the premises, the landlord may distrain them wherever he finds them, within thirty days after their removal, unless they have been *bona fide* sold for a valuable consideration, and all persons privy to, or assisting, such fraudulent conveyance, forfeit double the value to the landlord. The landlord may also distrain his tenant's beasts feeding upon any common belonging to the demised grounds, and he may, by the assistance of a peace officer of the parish, break open, in the day-time, any place where the goods may have been fraudulently removed and locked up to prevent a distress, oath being first made, in case it be a dwelling house, of there being reason to suspect a concealment of such goods there.

A man entitled to distress, should distrain for his whole demand at once; but, if there be not sufficient property on the premises, or should he happen to mistake the value of the thing distrained, so as not to take sufficient to answer his demand, he may

may distrain a second time: for, should he take unreasonable distress for arrears of rent, he is liable to be heavily fined for so doing.

A person distraining for rent may turn any part of the premises, on which a distress is taken, into a pound for securing of such distress. If animals be impounded in a common, open pound, the owner must take notice of it at his peril; but if in any other open pound, so constituted for the purpose, the distrainer must give the owner notice: and in both these cases, the owner is to provide the beasts with food. But if they are put into a close pound, as a stable or barn, the landlord or distrainer must feed them. Household goods or other things liable to be damaged or stolen, should be put in a close pound, or the distrainer must answer for the consequences.

Where the owner of a distress thinks himself aggrieved, and wishes to contest the matter with the distrainer, he must replevy the distress, that is, give security to try the matter in a court of law, in which case the distress will be restored to him; he being then bound to return the cattle or goods into the hands of the distrainer, or pay him his demand with the expences, in case it be given against him.

If a distress be not replevied, or the money paid, the distrainer is authorized to sell the distress and pay himself. In all cases of distress for rent, if the tenant or owner does not, within five days after the distress be taken, and notice of the cause thereof given him, replevy the same, with sufficient security, the distrainer, with a constable, shall get it appraised by two sworn appraisers, and sell it to satisfy the debt and charges, returning the surplus, if any, to the owner.—An inn-keeper may also detain the goods of his guest for the reckoning.

V. Seizing of heriots, due on the death of a copy-holder, is the last kind of self-remedy. Similar to this is the seizing of waifs, wrecks, estrays, deodands, and the like; the persons intitled to them being justifiable in seizing them, though they might recover them by action.

There are also two modes of settling disputes between the parties themselves, without any recourse to a court of law. These are *agreement* and *arbitration*.

Agreement is the matter amicably settled, and satisfaction agreed on between the aggressor and party injured, which, when performed, bars all actions on that account.

Arbitration is where the matter in dispute is left to the decision of two or more *arbitrators*, who, should they disagree, refer it to the determination of a third person nominated by them, which

which third person is called an *Umpire*, and his award or determination is final.

Chap. Second.

O F C O U R T S.

THE next object of our enquiry is the redress of injuries by application to courts of law.

The three chief parties on a trial are the plaintiff, the defendant, and the judge who tries the cause; but in the superior courts there are attorneys and counsel, as assistants.

An attorney at law is a similar office to a proctor among the civilians, whom the plaintiff or defendant appoints to appear for him, and to manage and conduct his cause.

Of counsel there are two degrees, barristers and serjeants. Barristers are called to the bar, after a certain period of standing in the inns of court. After sixteen years standing, they may be called to the degree of serjeants. The judges of the courts of Westminster are always admitted serjeants before they are advanced to the bench. From both serjeants and barristers, the King's counsel are usually selected, the two principal of whom are called his attorney and solicitor-general. Counsel are supposed to plead *gratis*, of course they can maintain no action for their fees, and to encourage in them a freedom of speeche in the lawful defence of their clients, a counsellor is not answerable for any matter by him spoken, though it should prove groundles, and reflect on the reputation of another; provided it relates to the cause he espousēs, and is suggested in his client's instructions.

There are three courts of justice, whose jurisdiction is general throughout the kingdom: 1. The courts of common law and equity; 2. The ecclesiastical courts; and, 3. The courts of admiralty.

I. Of the courts of Common Law and Equity; the lowest is the court of *Pie Poudre*, which signifies a pedlar. It is a court incident to every fair and market, of which the steward of him who owns the toll of the fair or market is judge. This court has cognizance of all matters of contract that can possibly arise within the precinct of the fair or market. From this court a

writ of error lies, in the nature of an appeal, to the courts of Westminster.

II. The next in consequence is a court incident to every manor in the kingdom, called a Court-baron, and held by the steward within the same manor. In this court the estates of copy-holders are transferred, and other matters transacted relative to their tenures only.

III. The court of Common Pleas is one of the upper Common Law courts, calculated for redress throughout the kingdom at large. The judges of this court are now four in number; one chief and three *Puisne* judges, who sit every day, in term-time, to determine all matters of law arising in civil causes, whether real or personal. An appeal lies from this court to the court of King's Bench.

IV. The court of King's Bench is the supreme court of Common Law in the kingdom. It has also four judges, a chief justice and three *puisne* ones.

This court is empowered to be a check upon all inferior courts, and may either stop their progress, or remove their proceedings here. It has the superintendance of all civil corporations, commands magistrates and others to do what their duty requires; protects the liberty of the subject; and takes cognizance both of criminal and civil causes, it is also a court of appeal, into which may be removed all determinations of the court of Common Pleas, and of all inferior courts in the kingdom. The determinations, however, even of this court may be removed by a writ of error into the House of Lords, or the court of Exchequer Chamber, according to the nature of the suit and the proceedings.

V. The court of Exchequer is a court of law, and a court of equity too, which is the reason of it's being here classed, tho' it is inferior to the courts of King's Bench and Common Pleas. It consists of two divisions, the receipt of the Exchequer, which manages the royal revenue, and the judicial part of it, which is a court of equity and a court of common law.

The court of equity is held before the lord treasurer, the chancellor of the Exchequer, the chief baron, and three *puisne* barons, who derive their names from being chosen out of the barons of the kingdom. Under the fiction of having connexions with the crown, all kinds of personal suits may be prosecuted in this court. So, on the equity side, any person may file a bill against another on the bare pretence of being the King's accomptant, which is never enquired into. An appeal from the equity side lies immediately to the House of Peers, but from the

the common law side it must be brought into the court of Exchequer Chamber, and from their determination an appeal lies to the House of Lords.

VI. The high court of Chancery is the most important of all the upper courts in matters of civil property, and the lord chancellor or lord keeper of the great seal, is superior in precedence to any temporal peer, and is the first officer of state. He is a privy-counsellor by office, and speaker of the House of Lords by custom. He is the general guardian of all minors, idiots, and lunatics, and has the superintendance of all charitable uses in the kingdom. He is visitor, in right of the King, of all hospitals and colleges founded by the crown, patron of all the crown livings under twenty pounds a year in the King's books, and has the appointment of all justices of the peace throughout the kingdom.

The court of Chancery has two distinct tribunals, one being a court of Common Law, the other a court of Equity ; the jurisdiction of the former is to cancel the King's letters patent, when made against law, or on false suppositions, and to take cognizance of petitions, &c. when the King has been advised to do any act, or is put in possession of any lands or goods, in prejudice to the right of a subject. It takes cognizance also of all personal actions, where any officer or minister of the court is a party. It also holds plea of the tithes of forest land, where granted by the King, and claimed by a stranger against the grantee of the crown, and of executions on statutes or recognizances ; but the chancellor, as he cannot summon a jury, cannot try any cause that requires a verdict, but must, in such a case, deliver the record into the court of King's Bench.

From this common law part, issue all original writs that pass under the great seal, all commissions of charitable uses, sewers, bankruptcy, lunacy, and the like. These writs relating to the people were formerly kept in a hamper, in *banaperio*, and those relative to the crown, in a little bag : and from thence arises the appellations of the *banaper* and *petty-bag* offices, both which belong to the common law court of Chancery.

The court of equity is, however, become of the greatest judicial consequence ; yet, an appeal lies from it, as from other superior courts, to the House of Lords.

VII. There is another court called the court of Exchequer Chamber, which is merely a court of appeal to correct the errors of other courts. It consists of all the judges, and sometimes the lord chancellor ; and into this court are sometimes adjourned, from the other courts, such causes as the judges find to be

be of great weight and difficulty, before any judgment is given upon them in the courts below. But from all the branches of this court of Exchequer Chamber, a writ of error lies to

VIII. The House of Lords; which is the supreme court of judicature in the nation. It has, however, no original jurisdiction over causes, but is confined to appeals, to correct any mistake or injustice in the courts below.

IX. I must not omit to mention the courts of assize, and *Nisi prius*, which are a kind of auxiliary courts, composed of two or more commissioners, sent twice a year, all round the King's dominions, except in London and Middlesex, where *Nisi prius* courts are held in and after every term, by the chief or other judges of the several superior courts; and except the four northern counties, where the assizes are held only once a year. Their business is to try, by a jury of the respective counties, such causes as would otherwise come before the courts of Westminster; *nisi prius, unless before* the day prefixed, the judges of assize go into that part of the country.

We will proceed now to the Ecclesiastical courts, and the courts of Admiralty, which are also of general jurisdiction: and first of the spiritual or ecclesiastical; and here also we will begin with the most inferior.

I. The Archdeacon's court is the lowest; held in his absence before a judge of his own appointing, called his Official. An appeal lies from this to that of the bishop.

II. The Bishop's court is held in the cathedral of each bishop's respective diocese, and is called the Consistory court. The bishop's chancellor or commissary is his judge, and from his sentence an appeal lies to the archbishop of the province.

III. The court of Arches is the next superior, and is a court of appeal from the sentence of all inferior ecclesiastical courts in the province of Canterbury, the judge of which is called *dean of the Arches*. But from this court an appeal lies to the court of delegates.

IV. The court of Peculiars is a branch of the court of Arches, and has jurisdiction over all those parishes, throughout the province of Canterbury, which, though in other dioceses, are subject only to the metropolitan. All ecclesiastical causes arising within these peculiar jurisdictions, are cognizable in this court, from which an appeal also lies, as from the court of Arches, to the court of Delegates.

V. The next is the Prerogative court, established for the trial of all causes relative to wills, where the deceased left property to the amount of five pounds in two dioceses; in which case

case the probate of wills, belongs to the archbishop of the province, by way of prerogative. The judge here is appointed by the archbishop, from whom an appeal also lies to the Court of Delegates.

VI. The great court of appeal, in all ecclesiastical matters, is the court of Delegates, issuing out of Chancery, by virtue of the King's commission, to represent his person, and hear all appeals made to him. This commission is generally filled with lords spiritual and temporal, judges, and doctors of the Civil law.

The Courts of Admiralty are such, as have power to determine all injuries arising upon the seas, or in parts out of the reach of the Common Law. The Court of Admiralty here is held before the Lord High Admiralty of England, or his deputy. Its proceedings are agreeable to the method of the ecclesiastical courts, and of course, held at the same place. It is no court of record; and an appeal from it lies to the Court of Delegates.

Having treated of the several courts, whose jurisdiction is general, we will proceed to those which are special, instituted only to redress particular injuries. These are, 1. Those of commissioners of sewers: 2. Courts of policies of assurance: 3. The Marshalsea: 4. The courts in the principality of Wales: 5. That of the duchy of Lancaster: 6. Those of the counties palatine: 7. The stannary courts in Devon and Cornwall: 8. The several courts in the city of London, with the courts of conscience: and, 9. The Chancellor's court in the two universities.

I. The court of Commissioners of Sewers, is a temporary tribunal. Its jurisdiction is to overlook the repair of sea-banks, and sea-walls, the cleansing of rivers, public streams, ditches, conduits, &c. and is confined to such districts as the commission specifies. This court may fine and imprison, and the commissioners may convict by jury, or on their own view, and may proceed to the removal of annoyances or the preservation of the sewers. They may also assess such rates upon the owners of land within their district, as they shall judge right, and levy the same by distresses on those who refuse to pay: nay, they may seize and sell the refuser's land for that purpose; but, their conduct is under the controul of the court of King's Bench.

II. The jurisdiction of the court of Policies of Assurance being defective, no such commission has of late years issued; insurance causes being now determined by a verdict of merchants in Westminster Hall.

III. The

III. The Marshalsea Court is held weekly in the Borough of Southwark, and extends now to all manner of personal actions which shall arise between any parties, within twelve miles of his Majesty's palace at Whitehall. A writ of error lies from it to the court of King's Bench.

IV. Another species of private courts, are those throughout the principality of Wales, erected at it's reduction. A session being appointed to be held twice in every year in each county, by judges appointed by the King, in which cognizance is taken of real and personal actions, with the same form of process, and in as ample a manner, as in the court of Common Pleas in Westminster ; and, writs of error lie from judgments therein, to the court of King's Bench.

V. There is a private court also held before the chancellor of the duchy of Lancaster or his deputy, relative to all matters of equity, concerning lands held of the crown in right of the duchy of Lancaster ; the proceedings in which are the same as on the equity side, in the courts of Exchequer and Chancery : which courts may take cognizance of the same causes.

VI. There are also courts belonging to the county palatine of Durham, and the royal franchise of Ely ; having cognizance of matters both in law and equity. The judges of assize sit in Durham and Ely, by virtue of a commission from their respective bishops. The Cinque Ports have also courts of their own : but, a writ of error lies from the mayor and jurats of each port, to the lord warden of the Cinque Ports in his court of Shepway, and from the court of Shepway to the King's Bench. A writ of error also lies from the courts palatine, to the court of King's Bench.

VII. Another species are the Stannary Courts of Devon and Cornwall, instituted for the administration of justice among the tinners. These are held before the lord warden and his substitutes. The appeal here lies from the steward of the court, to the under-warden ; from him to the lord warden, and thence to the privy-council of the prince of Wales as duke of Cornwall, and from thence to the King himself.

VIII. The several courts within the city of London, and other cities, boroughs, and corporations, are, of the same kind, private and limited. The chief in the city of London are the sheriffs' courts : from which, a writ of error lies to the court of hustings, before the mayor and recorder ; thence to justices appointed by the King's commission, and thence, to the House of Lords. Courts of conscience also, may be considered under

under this head, which are courts for the recovery of debts under forty shillings, established in many trading towns.

IX. The last species of private courts, are those of the vice-chancellors in the two universities. Here they are at liberty to try and determine, both according to the Common Law or their own customs, as they please, all civil actions and suits whatsoever, when a scholar, or one of their own body is one of the parties, excepting in such cases where the right of free-hold is concerned. The judges of these courts are the vice-chancellors and their deputies. From their sentence, an appeal lies to delegates appointed by the congregation, from thence to other delegates of the house of convocation; and, if they all three concur in the same sentence, it is final; if not, the last appeal is to judges delegates appointed by the crown under the great seal in Chancery.

Having now described the nature of the several courts, we are next to point out in which of these courts, a man is to apply for redress, in every possible injury that can be offered either to his person or his property.

I. The private wrongs cognizable by the ecclesiastical courts, are of three kinds, *viz.* money, matters, marriages, and wills.

1. Of the first are such as relate to tithes, and ecclesiastical dues. The ecclesiastical courts have no power to try the *right* of tithes, unless between spiritual persons; between clergymen and laymen, they can only compel the payment of them where the right is not disputed. Small tithes under the value of forty shillings, may be recovered, by complaint to two justices; and, the same remedy is extended to all tithes withheld by Quakers, under the value of ten-pounds.

The spiritual courts have also cognizance of non-payment of other ecclesiastical dues to the clergy, as pensions, mortuaries, compositions, offerings, and surplice-fees. But all offerings not exceeding the value of forty shillings, may be recovered before two justices of the peace.

The Ecclesiastical courts have also cognizance of spoliations, dilapidations, and neglect of repairing the church, and things belonging to it, or for non-payment of a churchwarden's rate made for the use of the church or church-yard.

Spoliation is an injury done by one incumbent to another, by taking the profits of his living under a pretended right. Dilapidations are pulling down the chancel, parsonage-house, or other building belonging to it, or suffering them to decay. In which case, the successor may bring an action for damages against

A Summary of the

against his predecessor, if living, or, if dead, his executors. And all money recovered for dilapidations shall, within two years, be employed upon the buildings, in respect whereof it was recovered; on penalty of forfeiting double the value to the Crown.

2. Matrimonial causes are also the province of the Spiritual Courts to try. The spiritual court will also compel a husband or wife who separate from each other, without sufficient reason, to live together again, if either of the parties desire it. Separations and divorces are also within the jurisdiction of this court. Where it is improper, from any cause arising after marriage, such as intolerable cruelty, adultery, or perpetual disease, and the like, that the parties shall not live any longer together; this court will decree a separation from bed and board; but, if the cause existed before marriage, and was such as rendered the marriage void from the first, as being too near of kin, corporal imbecility, or the like, it will pronounce the marriage totally void. In separation from bed and board, an allowance, called alimony, is generally decreed to the wife for her maintenance, suitable to her situation in life, which, if the husband does not pay, this court, on an application, will compel him; but, no alimony will be allowed in case of divorce for adultery on her part.

3. Causes respecting wills are also heard in this court; and, it will also compel executors to pay legacies, where they are withheld; but, it has no way of enforcing its sentences, than by excommunication.

An excommunicated man cannot serve on juries, be witness in any court, nor bring an action to recover lands or money due to him. And, if, within forty days after the sentence has been published in the church, the offender does not submit and abide by the sentence of the court, a writ issues to the sheriff, to take the offender and imprison him in the county goal, till he is reconciled to the church.

II. Injuries cognizable by the courts of admiralty, are such as are triable by the common Law, but committed on the high seas, out of the reach of our ordinary courts of justice.

III. With respect to the courts of Common Law, all possible injuries are here cognizable, that do not fall within the jurisdiction of the Spiritual Courts or courts of Admiralty. These shall be the subject of the next two chapters; but, there are two injuries I should mention here; these are, when justice is delayed by an inferior court that has cognizance

cognizance of the cause; or, when such inferior court takes upon it to decide, where it has no cognizance.

1. The first of these injuries is remedied by a writ of *mandamus*, from Chancery, commanding them in the King's name to proceed to judgment, when, if the judges of the inferior court neglect or refuse, they may be taken into custody.

A writ of *mandamus*, in general, is a command of the King, from the court of King's Bench, and directed to any person, corporation, or inferior court of judicature, requiring them to do some particular thing belonging to their office, which the court of King's Bench has previously determined to be consonant to right and justice; such as to compel the admission, or restoration of the applicant, to any office or franchise of a public nature, whether spiritual or temporal; to academical degrees; to the use of a meeting-house, &c. to compel the production, inspection, or delivery of public books and papers; the surrender of the *regalia* of a corporation; to oblige corporate bodies to affix their common seal; to compel the holding of a court, and the like. It will also compel judges of inferior courts, to do speedy justice, where the same is delayed; as to oblige the courts of London to enter up judgment; the Spiritual Courts to grant administration, and the like.

2. The other injury, that of a court's taking up a cause which it has no cognizance of, is remedied by a writ of *prohibition*, commanding the judge and parties of a suit, in any inferior court, to cease from prosecuting it: and if either the judge or the party shall proceed after such prohibition, they may be taken into custody, and punished for the contempt, at the discretion of the court that awarded it; and an action will lie against them to give the injured party damages.

Chap. Thir^d.

OF REDRESS BY APPLICATION TO COURTS BETWEEN SUBJECT AND SUBJECT.

WE now proceed to the several injuries cognizable by the courts of Common Law; and, first we will consider those injuries committed between subject and subject; this done, we

we will take into consideration those injuries that may occur between the crown and a subject.

All injuries, whether they affect a man's person or property, are of two kinds ; the one attended with violence, as batteries, or false imprisonment ; the other, without violence, as slander, or breach of contract ; and, as in treating of *rights* we divided them into those of persons and things ; so in treating of injuries or *wrongs*, we will divide them into such as affect the *rights of persons*, and the *rights of things*, or property.

I. And first, as to those wrongs which affect the rights of persons, the personal security of individuals ; they are either injuries against, 1. Their lives ; 2. Their limbs, or their bodies ; 3. Their health ; or, 4. Their reputations.

1. Injuries affecting the life of a man we shall treat of in the fourth book.

2. Those affecting the limbs or bodies may be committed, 1. By threats of bodily harm, through fear of which a man is interrupted in his business : where they join, pecuniary damages may be recovered. 2. By assault, which is an attempt or offer to beat another, though without touching him : as lifting up a cane or the arm in a threatening manner ; or striking at a man, but missing him. Damages may be recovered here. 3. By battery, which is the unlawful beating of another. Beating is in some cases lawful, as in the moderate correction of children, scholars, and apprentices, or on the principle of self-defence, or in defence of my goods or possessions, where a man endeavours to deprive me of them. A churchwarden or beadle may also justify turning a person out of church, and prevent his disturbing the congregation ; so may a man turn another out of his house. But, for unlawful beating, a jury will give adequate damages. 4. By wounding. 5. By maiming, which is depriving a man of those members proper for his defence ; these are allowed to be not only legs and arms, but a finger, an eye, a fore-tooth and some others. For the injuries of assault, battery, wounding, and maiming, an indictment may be brought as well as an action, or both together ; one at the suit of the crown, for breach of the peace ; the other, at the suit of the injured party for damages.

4. An action, (which is the universal remedy for all personal injuries done without violence) will also lie, where a man's health is injured by the unfair practices of another ; as, by selling him bad provisions or wine ; by the exercise of a noxious trade, which corrupts the air in his neighbourhood ; or,

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by the neglect or unskilfulness of his physician, surgeon, or apothecary.

5. A similar action will also lie, and a jury will give adequate damages for injuries affecting a man's good name ; such as slanderous words, tending to his damage : or any false tale that may endanger him in law, as to say he is perjured, or hath poisoned another ; or which may exclude him from society, as to say, he has an infectious disease : or to hurt him in his profession, as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave. Defamatory words spoken of a peer, a judge, or other great officer of the realm, are accounted still more atrocious, and are called *scandalum magnum*. Thus words that would not be actionable, if spoken of a common person, are highly so, if spoken of these. Words also tending to scandalize a magistrate, or a person in a public trust, are considered as more highly injurious, than when spoken of a private man. If the offender be prosecuted on behalf of the crown, he may be imprisoned for his slander. And it is now held, that for scandalous words of the several kinds before-mentioned, an action may be had without proving any particular damage ; but, with regard to words that do not, upon the face of them, import injury to the person defamed, it is necessary that he should prove he has sustained thereby some particular damage ; for mere scurrility, as rogue or rascal, without any injurious effect, will not support an action. Calling a man heretic or adulterer, are cognizable only in the Spiritual Courts, unless temporal damages can be proved, in which case, an action will lie for these. Defamatory words must also be *maliciously* spoken ; for, if said in a friendly manner, as by way of advice or concern, they are not actionable. If the defendant also be able to prove his words, no action will lie, even though the defamed person can shew he has received injury thereby.

A man's reputation may be hurt by printed or written libels, pictures, signs, and the like, which set him in an odious, or ridiculous light. With respect to libels, there are two remedies, one by indictment, another by action, and that where the party is indicted, whether the matter be true or false ; of course, on an indictment for a libel, the defendant is not allowed to alledge the truth by way of justification ; but if an action be brought, which is to give the injured party damages, the defendant may, as for words *spoken*, prove the truth of the fact, and shew, that the plaintiff has received no injury. If the party be defamed by pictures or signs, it is necessary to bring home

home the allusion, and prove, that some damage has accrued in consequence.

Sending a gentleman a wooden gun, or a licence, to keep a public house, are libels, for which, informations have been granted. And with respect to libels, it matters not whether the party be alive or dead. The publisher of a written libel is equally guilty with the author, though he knows not the contents of the paper ; and if he who reads it, or has heard it read, maliciously reads it or repeats in the presence of others, or lends it or shews it to another, he is deemed a publisher ; so is one who copies it, unless it be to deliver it to a magistrate. Even finding a libel on a bookseller's shelf, is a publication of it by a bookseller, though it be put upon that shelf by a servant, without his master's knowledge; but then it must be such a libel as is publicly known. He who writes a libel dictated by another, is guilty of making it ; for, though a man speaks libellous words, it is not a libel, unless the words be put in writing.

There is still another mode of injuring a man's character, which is, by preferring malicious prosecutions against him. In this however the law has given a very adequate remedy in damages, either by an action of conspiracy, which can be brought, if there are two persons concerned, or if only one, by a special action on the case for a false and malicious prosecution. To carry on an action of conspiracy, the plaintiff must obtain from the judges a copy of the record of his indictment and acquittal, which in prosecutions for felony is seldom granted, where there was the least probable cause to found a prosecution on. But a person who has been indicted, and where the bill has not been found by the grand jury, may bring an action against the prosecutor for a malicious prosecution. Any probable cause, however, for preferring an indictment, will justify the defendant.

The second injury that affect the rights of persons is false imprisonment.

Every confinement of the person is deemed an imprisonment, whether it be in a common prison or a private house, or even by forcibly detaining one in the street. In short, it is illegal detention, whether it arises from some error in legal process, or some defect in issuing warrants, or executing them ; as arresting by mistake a wrong person ; serving a writ on a Sunday, or in a privileged place. The remedy for this is removing the injury, and making satisfaction for it.

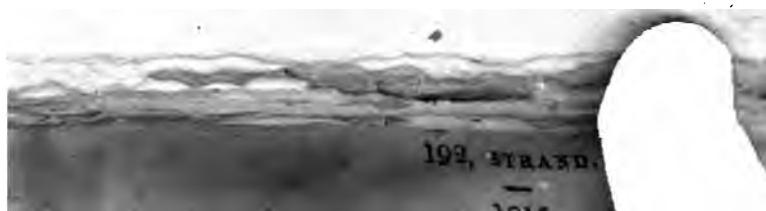
The first is by a writ of *habeas corpus*, which enacts, That the prisoner shall be brought up before the court, within twenty days.

days. That on complaint and request in writing, or on behalf of any person committed and charged with any crime, (unless he be committed for treason or felony expressed in the warrant, or unless he is convicted and charged in execution by legal process,) the Lord Chancellor, or any of the twelve judges in vacation, upon viewing the copy of the warrant, or affidavit that a copy is denied, shall, unless the party has neglected for two terms to apply to any court for his enlargement, award a *habeas corpus* for such prisoner, returnable immediately before himself, or any other of the judges, and upon the return made, shall discharge the party on bail, if bailable. That officers and keepers neglecting to make due returns, or not delivering to the prisoner, or his agent, within six hours after demand, a copy of the warrant of commitment, or shifting the custody of a prisoner from one to another, without sufficient reason or authority (expressed in the act) shall, for the first offence, forfeit one hundred pounds, and for the second, two hundred pounds to the party grieved, and be disabled to hold his office. That no person, once delivered by *habeas corpus*, shall be recommitted for the same offence, on penalty of five hundred pounds. That every person committed for treason or felony, shall, if he requires it, the first week of the next term, or the first day of the next session of *oyer and terminer*, be indicted in that term or session, or else admitted to bail, unless the King's witnesses cannot be produced at that time; and, if acquitted, or, if not indicted and tried in the second term or session, he shall be delivered from his imprisonment for such imputed offence: but that no person, after the assizes shall be opened for the county in which he is detained, shall be removed by *habeas corpus*, till after the assizes are ended, but, shall be left to the justice of the judge of assize. That any such prisoner may move for and obtain his *habeas corpus*, as well out of the Chancery, as out of the King's Bench or Common Pleas; and that the Lord Chancellor or judges denying the same, shall forfeit severally to the party grieved, the sum of five hundred pounds.

The remedy for false imprisonment, is by an action for the same, accompanied by a charge of assault and battery, wherein the party grieved shall recover damages, and the offender is, as for all other injuries committed with force, liable to pay a fine to the King.

But personal injuries may be sustained under the four following relations: husband, parent, guardian, and master.

1. Taking away a man's wife, criminal conversation with her, and beating or otherwise ill using her, are three atrocious injuries to a husband. Taking



Taking a man's wife away, whether by violence, fraud, or persuasion, is punishable at Common Law, wherein the husband shall recover damages for the injury ; and, the offender shall be imprisoned two years, and be fined at the pleasure of the court. The wife's consent to go, will not mitigate the offence ; both the King and the husband may have their action ; and the husband is also intitled to recover damages against such, as persuade and entice the wife to live separate from him without a sufficient cause.

For adultery, as a civil injury, the husband may bring an action against the adulterer ; wherein the damages given are usually large, according to the rank and fortune of the plaintiff and defendant, and the circumstances of the case.

For beating or otherwise ill-using a man's wife, if it be a common assault, battery, or imprisonment ; the husband and wife may, in their joint names, recover damages by an action. If the ill-treatment be very gross, so as to lay the wife up, the law gives the husband a separate action, in which he shall recover damages.

2. Taking away a man's children is an injury done him, which he may remedy in the same manner, as a husband may the taking away of his wife.

3. Of a similar kind is the injury done to a guardian by taking away his ward, and for which he may recover damages for the benefit of the ward ; but a more summary method of redressing all complaints relative to wards and guardians, is by an application to the court of Chancery.

4. As a master, there are two kinds of injuries a man may sustain, the one, by retaining the hired servant before his time be expired ; the other, by beating or confining him, so that he is not able to work. In this case, the master may not only recover damages by an action against the person that entices him away ; but, he may have an action against the servant for non-performance of his agreement. If the new master, however, was unacquainted with the servant's contract, no action will lie against him, unless he refuses to restore the servant upon demand. The other injury, that of beating, confining, or disabling a servant, hangs on the same principle ; the labour of the servant being the property of the master. In this case, not only the master may recover damages, but the servant, as an individual, may recover damages likewise.

We may here observe, that redress is only pointed out to one party, the superior; viz. the husband, father, &c. but the wife or child, if the husband or parent be slain, may prosecute

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the criminal by appeal, which is in the nature of a civil satisfaction, and of which more will be said in the next book.

II. Our next enquiry is the injuries done to a man in his personal property, and that whether the property be in possession or not.

1. If it be in his possession, it is an injury to deprive him of it, or damage it, and in depriving a man of his property, two things are to be considered, whether it be unjustly taken from him, or illegally withheld, when lawfully taken.

In unjust taking, the person injured may recover the goods so taken, and damages for loss sustained by such invasion.

Other remedies for unjust taking of a man's goods, are recovering only a satisfaction in damages. As where one takes the goods of another out of his actual possession, without a lawful title, which may be done without felony. For example, where a servant takes his master's horse, without his knowledge, and brings him home again; where a neighbour takes another's plough left in the field, and uses it in his own land, and then returns it; for the felonious intent of stealing must appear, to deem it an act of felony; I say such taking out of possession is only a trespass, for which an action will lie, and the plaintiff shall recover damages.

A man may also be injured in an unjust detainer of his goods, though the original taking might be lawful. As where one man distrains another's cattle for breaking into his grounds, and who, before they are impounded, tenders sufficient amends. If he detains them afterwards, the owner may have an action to recover, and will have damages allowed him for the detainer. Or, if one man lends another his wagon, and he refuses to return it, the injury consists in the detaining. Any man may take the goods of another if he finds them; but, no finder is allowed to acquire a property therein unless the owner be forever unknown; if he converts them therefore to his own use, and refuses to restore them, the owner may recover adequate damages, or the thing itself.

As to injuries that may be done to things while in the owner's possession, such as hunting his deer, shooting his dogs, laming his horses, or the like; the plaintiff shall recover damages in proportion to the injury he has received; and, it is not material, whether the injury be done by the defendant, or his servants by his direction, as in this case, the master is responsible for the conduct of his servants. Indeed actions will lie against them both. And, if a man keeps a dog or other animal used to

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do mischief, if the owner knows of such evil habit, he must answer for the consequences.

2. We proceed now to injuries done to personal rights not in possession, but such as arise from express or implied contracts.

Express contracts include debts, covenants, and promises, which may be recovered or enforced by action. With respect to promises, it may be necessary to observe, that it is enacted, That in the five following cases, no verbal promise shall be sufficient to ground an action on, but at the least some *memorandum* of it shall be made in writing, and signed by the party to be charged therewith. 1. Where an executor or administrator promises to answer damages out of his own estate. 2. Where a man undertakes to answer for the debt, default, or miscarriage of another. 3. Where any agreement is made upon consideration of marriage. 4. Where any contract or sale is made of lands, tenements, or hereditaments, or any interest therein. And, 5. Where there is any agreement that is not to be performed within a year from the making thereof.

Implied contracts include those sums charged on a man by the sentence of the law, which he is bound to pay. So, that if a man hath once obtained a judgment against another for a certain sum, and neglects to take out execution thereon, he may afterwards bring an action of debt on this judgment: on this principle it is, that a man is obliged to pay any forfeitures imposed by the bye-laws or private ordinances of a corporation to which he belongs, or any fines set in a court-leet, or court-baron; or, any penalties inflicted for the breach of positive laws; or in short, in any thing he has engaged to perform, as far as duty or justice requires. As, if I employ a person to do any business for me, the law implies, that I engaged to pay him as his labour deserved; and, if I neglect to pay him, he has a remedy, by action. Where one has received money belonging to another, without any valuable consideration given on the receiver's part, the law implies, that the person so receiving, engaged to account for it to the true owner, and if he unjustly detains it, an action will lie against him: so will it lie against a man to whom money is paid through mistake; or on a consideration which happens to fail, or through imposition, extortion, or oppression, or indeed where any undue advantage is taken of the plaintiff's situation. And where a person has expended any money for the use of another, the law supposes a promise of repayment, and an action will lie to enforce it. So will it for the balance of an account: though the best way to enforce a settling of accounts is by filing a bill in equity, which

obliges the defendant to give in his account upon oath, and also implies, that every one who undertakes an office, acts with his employer to perform it properly, and if not damages may be recovered by the party grieved ; for example, if a sheriff or gaoler suffers a prisoner under arrest to escape ; if a counsellor or attorney betrays the cause of his client ; if an inn-keeper does not secure his guest's goods in his possession ; if a common carrier does not deliver the goods he receives according to the directions ; if a farrier lame a horse being him ; if a taylor or other workman does not execute his business in a workman-like manner ; in all these cases an action will lie, and damages may be recovered for a breach of the general undertaking : but, if I employ a person in these concerns, whose common business it is not, I cannot recover damages, unless I prove a special agreement ; so, if an inn-keeper or other victualler that hangs up a sign, opens his house, for travellers, will an action lie, if he gives admittance to any one at proper times. If any one sells me with false dice or cards, by false weights or measures, or by selling me one commodity for another, an action against him for damages ; for the law implies, that all contracts are to be fair and honest. In contracts likewise for provisions, it is ever understood, that the seller warrants the commodity to be his own, if it proves otherwise, an action for damages will lie for the deceit. In contracts for provisions, it is implied that they are wholesome ; and, if the seller warrants the commodity on the sale, to be good, if it proves otherwise, the law will oblige him to make the buyer a compensation. If the warrant be not made at the time of the sale, after, the warrant is void ; and though a seller does not warrant the goods he sells, yet if he knew them to be bad, or measures to disguise them, or if they are in any shape different from what he represents them, the seller is answerable for their goodness. A general warranty will not, however, protect against visible defects : for example, a man's warrant to a horse to be perfect, that has not a tail nor an ear, will make him responsible, unless the buyer was blind ; but, warranting a horse to be sound, that is blind, will subject the seller to damages, as the blindness of a horse every one is not intended with : and, if cloth is warranted to be of such a quality, and it proves otherwise, an action will lie for damages, which would be troublesome, and injurious perhaps to the cloth seller.

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But



But besides a special action on the case, a man may recover damages on an action of deceit, where there is fraud in the transaction, as where one man does any thing in the name of another, by which he is deceived or injured; as where an attorney brings an action in the name of another, and then suffers a nonsuit, whereby the plaintiff becomes liable to costs; or where one suffers a fraudulent recovery of lands or chattels to the prejudice of him that hath right.

In short, the non-performance of contracts, express or implied, includes every possible injury to personal property not in possession.

We come next to consider injuries to real property, or affecting real rights. These are six; 1. Ouster; 2. Trespass; 3. Nuisance; 4. Waste; 5. Subtraction; and, 6. Disturbance.

I. Ouster of a freehold, is a dispossessing the right owner in any way. The remedy for which is an action at law, when the owner may recover the possession and damages for the injury sustained.

With respect to leases, where tenants are in arrear, it is enacted, That every landlord, who hath by his lease a right of re-entry in case of non-payment of rent, when half a year's rent is due, and no sufficient distress is to be had, may serve a declaration in ejectment, and a recovery in such ejectment shall be final and conclusive, unless the rent and all costs be tendered within six months afterwards.

II. Trespass, is an entry on another man's ground without a lawful authority, and doing some damage, though it be merely the treading down of the grass; for which, an action will lie, and a jury will give adequate satisfaction.

A man is responsible also for the trespass of his cattle, whether they stray or break into the grounds of another: in which case, the party grieved may either distrain them, till the owner shall make him satisfaction; or he may recover damages by an action.

In some cases, entry on another's land may be justified; as when a man comes to pay or demand money, or to execute legally a process of law. A man may enter a public house without asking the owner's leave; so a landlord may justify entering to distrain for rent; a commoner to attend his cattle commoning in another's land, and, a reversioner to see if any waste be committed on the estate. The poor also, by the Common Law, may enter and glean on another's ground after harvest. Badgers and foxes, or any other ravenous beast, may be

be hunted in another man's land, the destruction of them being of public utility: but in cases, where a man makes an ill use of the power he has, he shall be deemed a trespasser from the beginning; as where a man, contrary to the inclinations of the owner, will stay unseasonable hours at a tavern, even his entry into the house is accounted a trespass: but refusing to pay for what he calls for, will not make him a trespasser; the publican's remedy here, is by an action of debt. In the case, however, of any irregularity of a landlord distreining for rent, it is enacted, That such irregularities shall not make his first entry a trespass, but the party injured shall have a special action of trespass for the real specific injury sustained, unless tender of amends hath been made. In hunting foxes or badgers, though a man may justify going upon another's ground, he cannot justify breaking the ground to dig them out. To prevent, however, vexatious and trifling actions of trespass, as well as other personal actions, the law declares, That where the jury, who try an action of trespass, give less damages than forty shillings, the plaintiff shall be allowed no more costs than damages; unless it shall appear, that the trespass was wilful and malicious, and it be so certified by the judge. Now every trespass is held to be wilful, when the defendant has been forewarned of; and every trespass malicious, though the damage given be less than forty shillings, where it plainly appears, that it was the defendant's intent to trespass and vex the plaintiff. Full costs are given against any inferior tradesman, apprentice, or other dissolute person convicted of a trespass in hawking, hunting, fishing, or fowling upon another's land. And in this statute it is held, that if a person be an inferior tradesman, as for example, a clothier, it matters not what qualification he may have in point of estate: but, if he be guilty of such trespass, he shall be liable to pay full costs.

III. The next species of real injuries to a man's lands is, by Nuisance. Nuisances are of two kinds, *public* and *private*; public we shall speak of under public wrongs; at present, therefore, we will confine ourselves to private nuisances, of which there are several kinds: such as may affect corporeal hereditaments, and such as damage incorporeal ones.

1. With respect to corporeal hereditaments: if a man erects a building so close to mine, as that his roof shall overhang mine, and throw the water on my roof, or shall obstruct or darken such of my windows as have existed time out of mind, it is a nuisance, for which an action will lie; I say, time out of mind, for if my house be lately built, it was

folly in me to build so near the ground of another, on which he has as much right to erect a building as myself: I must plead therefore custom, or ancient windows, to preserve them from obstruction. Keeping hogs, or other noisome animals so near another's house as to stench the air, is a nuisance; so is an offensive trade, as a tanner's, tallow-chandler's, &c. which should be exercised in some remote place. So if my neighbour neglects to fence or ditch, by which my lands are overflowed, it is also a nuisance. It is likewise a nuisance to stop or divert water that runs to another's meadow or mill; or to corrupt a watercourse, by erecting a dye-house or a lime-pit in the upper part of the stream; in short, to do any act that is injurious to my neighbour.

2. The same reason holds good in incorporeal hereditaments. If any one obstructs the way to my grounds; or where I have a right to hold a fair or market, erects another so near me as to injure me: they are nuisances: but, in the latter case, I must prove that my fair or market, is the elder one, and that the new fair or market is within seven miles of mine. So, erecting a ferry so near another antient ferry as to injure it, is a nuisance, because ferries, by prescription, are bound to be kept up for the public use, on pain of the owner's being amerced for the neglect: and, it would be unjust to let a new ferry share the profits which does not share the burden: but where the reason ceases, the law also ceases, of course, it is no nuisance to erect a mill so near another, as to draw away the custom; unless it also intercepts or draws away the water. Neither is it any nuisance to set up a school or a trade in rivalry with another, for by such emulation the public are like to be gainers.

As the law gives no private remedy but for a private injury, so no action will lie for a public nuisance. The remedy in such case is by indictment at the suit of the King, except where a private person receives some extraordinary injury by a public nuisance; as if a gravel-pit or ditch be left open in a public way, and a man on horseback fall therein; in which case an action for damages will lie. But, if a man takes upon himself to remove the nuisance that offends him, he can have no action for it. An action on the case will recover damages for a nuisance, but not remove it; however, as a continuance of a nuisance is a fresh nuisance, a fresh action will lie, if it be not removed, and more exemplary damages of course be given in a second verdict than in the first: but if an ill-natured neighbour will be obstinate enough rather to pay frequent damages and costs than remove the nuisance; the party grieved must have recourse to a particular

lar writ, which, though subject to great delay, will, in the end, send the sheriff with his *posse comitatus*, or power of the county, to level it.

IV. The next kind of injury to real property, is Waste or destruction of the estate in houses, woods, or lands, either by a voluntary demolition, or a neglect in repairing them.

1. Those only are injured by waste, who have some interest in the estate wasted. A man who has the absolute fee-simple of the estate, without any incumbrance or charge upon it, may commit what waste he pleases; but where a person has right of common in the place wasted, as a right of cutting and carrying away wood for firing or repairs; if the owner of the wood demolishes the whole wood, it is an injury to the commoner, and he can recover damages for this waste, by an action on the case.

But he who is most hurt by waste, is the reversioner of an estate, after a term for life or years is expired: here, if the preceding holder of the land, whether it be tenant in dower or courtesy, or lessee for life or years, if he was answerable for waste at Common Law, and commits or suffers any, it is a manifest injury to him that has the inheritance, and he may sue for and recover, damages. But he who hath the remainder for life only, cannot sue for waste, as he may never perhaps come into possession, of course can sustain no certain injury. Yet a rector, vicar, archdeacon, prebendary, and the like, who are seised or possessed, in right of their churches, of any reversion, may hold an action of waste, it being for the benefit of the church and their successor.

Courts of equity will, on complaint, grant injunctions to stay waste, till the defendant shall put in his answer, and the court shall thereupon make further order. Where tenants in common or joint-tenants commit waste, either may bring an action of waste against the other, compelling the defendant either to divide the estate and take the part wasted to himself, or to give security not to commit any further waste; but the waste here complained of must be something considerable. On a writ of waste, the plaintiff shall recover treble the damages assessed by a jury, from an inspection of the waste committed: and no defence set up that it was done by a stranger, shall acquit the defendant; the only thing given in evidence of use to the defendant, will be to prove that the destruction happened by lightning, tempest, the King's enemies, or other inevitable accident. If done by a stranger, the defendant may have an action against such stranger, and shall recover the damages he has suffered in consequence of it.

V. Subtraction is non-observance of any of those conditions, by which a man holds his estate, such as neglecting to swear fealty to the lord of the manor, to attend his courts, or to render the rent or service reserved; these are an injury to the freehold of the lord, by diminishing and depreciating the value of his feigniory.

The general remedy for all these is by distress, and the only remedy for the first two. For subtraction or with-holding of rents or services, the remedy is by action of debt. With respect to leaseholders, it is enacted, That where any tenant at rack-rent shall be one year's rent in arrear, and shall desert the demised premises, leaving the same uncultivated or unoccupied, so that no sufficient distress can be had; two justices of the peace (after notice affixed on the premises for fourteen days without effect) may give the landlord possession thereof, and thenceforth the lease shall be void. In writs of affize for rent, or on a replevin, should the tenant disclaim or disown his tenure, by which the lord would lose his verdict; the lord may immediately have a writ of right, grounded on this denial of tenure, and shall, on proof of the tenure, recover back the land itself so holden, as a punishment to the tenant for such his false disclaimer.

Where a tenant in fee-simple pays more services to the lord than he has a right to claim, through some former inadvertent payments either of himself or his ancestors; he may, by a writ, remedy this injury by ascertaining the services and reducing them to their original standard: but a tenant in tail may remedy such an injury, owing to over payments of his ancestors, by a plea to avowry in replevin. Where an under-tenant is distrained upon by the lord-paramount for the rent due to him by the mesne or middle lord, such tenant shall be indemnified by the mesne lord; and if he does not make the satisfaction enjoined, he shall lose his claim upon the tenant, and the tenant shall hold immediately of the lord-paramount himself.

So, to remedy the neglect of other services, as to oblige the inhabitants of a certain spot to grind their corn at such a mill; which was originally erected for their benefit; if such services can be proved by ancient custom, damages may be recovered for non-observance of them: but, besides these special remedies for subtraction, an action on the case will lie for them all, and entitle the injured party to a satisfaction.

VI. Disturbance is the last we have to mention of real injuries, which is hindering or disturbing the owners in the regular and legal enjoyment of certain incorporeal hereditaments. Of this

this injury there are five kinds : 1. disturbance of franchises ; 2. of common ; 3. of wages ; 4. of tenure ; and, 5. disturbance of patronage.

1. Disturbance of Franchises is interrupting a man in the legal exercise of holding a court-leet, keeping a fair or market, of free-warren, taking toll, seizing waifs, estrays, or in short in doing any other thing he may have a privilege or franchise for. Prevailing on suitors not to appear at the lord's court, or any way preventing them ; obstructing the passage to a man's fair or market ; hunting in his free-warren ; refusing to pay the accustomed toll, or the like, is considered as a disturbance of franchise ; for which the party grieved, by an action, shall recover damages ; but for non-payment of toll he may, if he pleases, distrein.

2. Disturbance of Common is interrupting or infringing upon a man's right of common ; as by turning cattle on a common where we have no right ; turning on improper or uncommonable cattle, where we have a right of common, as hogs or goats. But the lord, if it has been customary, may turn a stranger's cattle upon the common, or cattle that are not commonable. He may also make burrows and turn in rabbits, provided they are not suffered to increase so much as to destroy the common. In general, however, a stranger's and uncommonable cattle, if found on the land, may be distreined by the lord or the commoners : or if the injury be considerable, the commoner may recover damages by an action ; if considerable, the lord only can bring an action, and that for the entry and trespass.

Overstocking a common is also a disturbance ; or turning in more cattle than we have a right to do : but this holds good only with limited commons ; but even where commonage is without stint, there must be still left sufficient for the lord's own beasts. For overstocking, the lord may either distrein all above the number allowed, or may bring an action of trespass ; or he or any commoner may bring a special action on the case. To ascertain what number every commoner has a right to turn on, the common may be proportioned by a writ of admeasurament ; and the rule is, that no commoner shall turn on more cattle, than his own land will, with the assistance of a common, support. If a commoner overstock the common a second time, he shall, upon judgment being given against him, for such second surcharge, not only pay damages to the plaintiff, but forfeit such supernumerary cattle turned on to the King.

Another injury falling under this head, is when the owner of the foil, or other person so encloses or otherwise obstructs the

common, that the commoner is thereby shut out from enjoying the benefit : which may be done by erecting fences, driving off the cattle, ploughing up the soil, or stocking it with rabbits in such quantities as to destroy it. The usual remedy in these cases is by an action for damages. But the lord may enclose and convert to the uses of husbandry any waste grounds, woods, or pastures, in which his tenants have common-appendant to their estates (that is, where the common is limited, and not without stint) provided he leaves sufficient common to his tenants, according to the proportion of their land. No action shall lie against a lord for erecting on a common any windmill, sheep-house, or other necessary buildings : and it is held, that the lord may make any other necessary improvements, though, by so doing, he even abridges the common, and makes it less sufficient for commoners. And any lords of waste and commons, with the consent of the major part in number and value of the commoners, may enclose any part thereof for the growth of timber and underwood.

3. Disturbance in Ways is similar to that of commons, it chiefly happening when any man's right to a way over another's grounds is by any means obstructed, even by ploughing across it. If it be a way annexed to his estate, and the obstruction be made by the tenant of the land, it is a nuisance, and may be remedied accordingly ; but if the right of way, thus obstructed by the tenant, be annexed only to a man's person, and unconnected with any lands or tenements ; or if the obstruction of a way belonging to a house or land is made by a stranger, it is then, in either case, a disturbance only, and is to be remedied by an action for damages.

4. Disturbance of Tenure is driving a tenant off an estate. For example ; where a stranger, either by threats, or by any other means, contrives to drive away a tenant at will, off any lands or tenements, or even inveigles him to quit, the law considers it as an injury to the landlord of an atrocious nature, and will give him damages against the offender accordingly.

5. The last and most considerable species of disturbance, is that of Patronage, which is obstructing a patron in his presentation to a living.

Where a person, that hath no right, presents a clerk to a living, and that clerk be instituted ; this is called a Usurpation, and is a species of disturbance : but if the real patron pursues his right, within six months after the avoidance or the living's becoming vacant, he shail recover his presentation ; if he neglects it in the six months, he shall, for the peace of the church and for

for his own neglect, lose the turn for that time, and without remedy.

The pretended patron then, the clerk presented, and the bishop instituting, may be disturbers of patronage, and the law has given the injured patron an action for his relief.

On the vacancy of any living, the patron is bound, as we have seen, to present within six calendar months, or it will lapse to the bishop : on this presentation, if the clerk be qualified, the bishop is bound to institute him. Where there is any dispute about the right of presentation, each party enters a *caveat* with the bishop to suspend institution ; for, in the spiritual courts, institution, after a *caveat*, is void. If two presentations be offered to the bishop upon the same vacancy, the bishop may suspend the admission of either clerk, suffering the living to lapse ; but if the patron or clerk on either side request him to award a *jus patronatus*, he is obliged to do it : this is a commission from the bishop to his chancellor, to summon a jury of six clergymen and six laymen, to examine who is the real patron ; and if upon such examination and certificate returned thereof, he institutes the clerk of that patron they return as the true one, the bishop is no longer a disturber, let the event turn out as it will.

The clerk refused by the bishop may also have a remedy against him, by appeal to the court of his next immediate superior, as from a bishop to his metropolitan, and from the archbishop to the delegates.

Chap. Fourth.

OF REDRESS BETWEEN A SUBJECT AND THE CROWN.

HAVING considered the injuries that arise between subject and subject, we proceed next to those between a subject and the crown.

Personal injuries to a subject, from the great distance between the people and the throne, can very rarely happen ; indeed the law supposes, in decency, that they never can happen, and therefore has provided no remedy ; injuries, however, to a subject's right of property may occur, but this must be through the officers of the crown, for whom the law, in matters of right, entertains no respect or delicacy. K 5 The

The Common Law methods of obtaining possession or restitution of property from the crown, are by petition or manifestation of right, both which may be prosecuted either in Chancery or the Exchequer. But the methods of redressing such injuries as the crown may receive from a subject, are,

1. By such Common Law actions as are usual and consistent with the royal prerogative.

2. Where the King hath indiscreetly granted any thing by letters patent, which he should not have done, or where the patentee hath done any thing to forfeit the grant, the patent may be repealed in Chancery.

3. The King can recover money or other chattels, or can obtain satisfaction in damages for any personal wrong committed in the possessions of the crown ; as holding over after the determination of a lease ; cutting down timber and the like ; by an information filed in the Exchequer by the attorney-general, who then informs the court of the matter in question, in which the party complained of is put to answer, and trial is had, as in suits between subject and subject. Mere matters of police and public convenience are usually enforced by common informers, as the statutes direct.

Having pointed out the nature of the several courts of justice, and shewn to which of these courts redress must be applied for, in every particular case : I should now, in the last place, examine the manner in which the several remedies are pursued and applied by action ; I mean the modern methods of practice in our courts of judicature : but as this is not of use to a general reader, being the professional study of a lawyer, we will not swell the work with the detail. The practice of the court of Common Pleas, and which in all material-points is the same with the practice of the court of King's Bench, and the Common Law part of the Exchequer, may be found in Gilbert's History and Practice of the court of Common Pleas, by those who are desirous of studying it.

Chap. Fifth.**OF TRIAL, JUDGMENT, EXECUTION, AND THEIR INCIDENTS.**

I. **T**RIAL by jury has ever been esteemed, in all countries, as a privilege of the highest and most beneficial nature. A thorough knowledge of it, therefore, cannot be unacceptable to every gentleman in the kingdom ; and in explaining it, we will follow the order and course of its proceedings in the court of Common Pleas.

A writ is issued to the sheriff to compel a jury to attend on the first day of the term, on pain of their lands and goods being by him distrained ; or on the day when the judges open their commissions on their circuits. If the sheriff be a party in the suit to be tried, or any way related or connected with either of the parties, so as not to be supposed quite impartial, he is not trusted to return or name the jury, but the writ issues to the coroner for that purpose ; if any exception lies to the coroners, the writ is directed to two clerks of the court, or two persons of the county named by the court, and sworn ; and these two shall indifferently name the jury, and their return is final, no challenge being allowed to their array.

We see here that the person appointing the jury, is a man of some fortune and consequence ; and, of course, supposed to be above committing wilful errors, and he is also bound by oath faithfully to perform his duty ; and that he may not be supposed to summon an interested jury, if he has any interest or connection in the cause, he is not suffered to name them. After the jury is named, it is also some weeks before they are summoned, in which time the parties may enquire into their characters, connexions, &c. so that they may be challenged or excepted to upon just cause, and they are called upon to attend in their own neighbourhood, to avoid unnecessary expences to them and to the witnesses : and that the persons trying the cause may not be supposed to be interested, and to prevent factions and parties, a judge of a superior court is appointed for that purpose, who is a stranger in that part of the country ; for to remove all suspicion of partiality, it is wisely provided by statute, that no judge of assize shall hold pleas in any county where he was born, or inhabits.

Juries are either *special* or *common*. If the cause is of too delicate a nature for a jury of common freeholders to try, the sheriff, upon a motion in court, and a rule granted thereon, is to attend the proper officer with his freeholder's book, and the officer is to take indifferently forty-eight of the principal freeholders, in presence of the attorneys on both sides, who are each of them to strike off twelve, and the remaining twenty-four are returned. This is called a special jury. And, either party is entitled, upon motion, to have a special jury struck upon the trial of any issue, he paying the extraordinary expence, unless the judge will certify that the cause required such special jury. A common jury contains not less than forty-eight, nor more than seventy-two jurors : and their names, being written on tickets, are put into a box or glafs ; and when each cause is called, twelve of these persons, whose names are first drawn, shall be sworn upon the jury, unless absent, challenged, or excused ; or unless a previous view of the messuages, lands, or place in question shall have been thought necessary ; in which case six or more of the jurors returned, to be agreed on by the parties, or named by a judge, are appointed to have the matter in question shewn to them, and then such of the jury as have had the view, shall be sworn on the inquest, previous to any other jurors.

As the jurors appear when called, they are sworn, unless challenged by either party. In some cases the array may be challenged ; that is, the whole jury objected to ; as for example, where there shall appear some partiality in the sheriff or officer who named them, or if one of the parties to the suit be an alien, and a jury consisting of half foreigners be not returned agreeable to an act of parliament, which enacts that when either party is an alien born, the jury shall be one half denizens and the other aliens (if so many be forthcoming in the place) for the more impartial trial. But where both parties are aliens, the jury shall all be denizens. But in all cases, challenges or exceptions may be made to particular jurors ; as, if a lord of parliament be impanelled, either party may challenge him, or he may challenge himself ; if a juryman be an alien born, or a bondsman ; or if he have not a sufficient estate, namely, ten pounds a year in England freehold or copyhold, and six pounds in Wales ; or a leasehold for five hundred years, or for any term determinable on life or lives of the clear yearly value of twenty pounds, over and above the rents reserved ; or in Middlesex, if he is not a leaseholder of fifty pounds a year clear ; or in London, or Westminster, is not worth one hundred pounds. But when a jury

jury consists of half aliens and half denizens, no want of lands shall be cause of challenge to the alien, he being incapable of holding any. A juror may also be challenged for suspicion of partiality, as that he is of kin to the party within the ninth degree; that he has been arbitrator on either side; that he is interested in the cause; that an action is depending between him and the party; that he has been bribed; that he has formerly been a juror in the same cause: that he is the party's master, servant, counsellor, or attorney, or belongs with him to the same corporation or society; that he is acquainted with the party or the like; the validity of which is left to the determination of two indifferent persons, who are appointed by the court for that purpose. Particular crimes also will render a juror challengeable; as where he has been convicted of treason, felony, perjury, or conspiracy, or hath received judgment of the pillory, or to be branded, whipt, or stigmatized; or if he be outlawed or excommunicated, or hath been attainted of false verdict, *præmunire*, or forgery.

Certain men are exempted from the office of jurors, *viz.* sick and decrepid persons, persons not resident in the county, men above seventy years old, and under twenty-one; physicians and other medical persons, counsellors, attorneys, officers of the courts, and the like, and clergymen. When a sufficient number is impanelled, they are separately sworn to try the issue between the parties, and to give a true verdict according to the evidence.

The jury are now ready to enter into the merits of the cause, which is opened to them by the counsel for the plaintiff, stating the case minutely, every thing that hath been done in the cause, which is now to be tried, and what evidence they have in their favour: this evidence is then examined, and when gone through, the counsel for the defendant opens the adverse cause, and supports it also by evidence; and then the party which began is heard, by way of reply.

To enter into the great variety of nice distinctions with respect to what evidence is allowed to be given in particular cases, would be foreign to the design of this volume, which is not to form a lawyer, but to give a general reader a tolerable insight into the laws and constitution of this country.

Let it suffice them to say, that there is one general rule observed in all trials, which is, that the best evidence the nature of the case will admit of shall always be required, if possible to be had; if not possible, then the next best evidence that can be had.

Witnesses

Witnesses are compelled to attend by a writ of *subpoena*, serv-ed upon them, which commands them, laying aside all excuses, to appear at the trial, on pain of forfeiting one hundred pounds to the King, ten pounds to the party aggrieved, and damages equivalent to the loss sustained by want of such evidence. But no witness, unless his reasonable expences be tendered him, is bound to appear at all, nor when he appears, can he be com-pelled to give evidence, till such charges are actually paid him ; except he resides within the bills of mortality, and is summoned to give evidence within the same. All witnesses that have the use of their reason are competent and allowed to be examined, except such as are informers, and not qualified for jurors, or are interested in the event of the cause. And no counself, attorney, or other person intrusted with the secrets of the cause by the party himself, shall be compelled or perhaps allowed to give evidence of matters so intrusted to his secrecy : but he may be examined as to matters of fact, execution of deeds or the like, which might come to his knowledge without being so intrusted.

One witness (if credible) is sufficient evidence of a single fact, where no more are to be had ; but no one can be witness in his own cause : and as a witness is sworn to declare the *whole truth* ; he is not to conceal any thing he knows, though he should not be examined as to that point : and all this evi-dence is to be given openly in court before all parties, each par-tty having liberty to object to it's competency, and to be allowed by a judge or not, in court. And if the judge, either in his di-rections or decisions, mistakes the law, either through ignorance, inadvertency, or design; the counsel, on either side, may require him publicly to seal a bill of exceptions, stating the point wherein he is supposed to err ; which, if he refuses, the party may have a compulsory writ against him to oblige him, if the fact alledged be duly stated : and if he returns, that the fact is untruly stated, when it is otherwise ; an action will lie against him for making a false return. This bill of exceptions is in the nature of an appeal, examinable in the next immediate superior court, upon a writ of error, after judgment given in the other court below. But the usual way now is, for any misdirection of the judge, to grant a new trial. Where a juror knows any thing of the matter in question, he may be sworn as a witness, and give his evidence in public court.

The evidence being gone through on both sides, the judge, in open court, sums up the whole to the jury, representing the facts as they appeared to him, stating the evidence given, with his own remarks upon the subject, and giving them his opinion where

where any matter of law arises. The jury then, unless the case be very clear, withdraw from the court to consider of their verdict.

II. The jury having brought in their verdict, and the trial being ended, next follows the judgement of the court upon what has passed ; which, for certain causes, may either be suspended or arrested. For if any defect of justice happened at the trial, by surprize, inadvertency, or misconduct ; the party aggrieved may have relief in the court above, by suspending the judgment, and obtaining a new trial ; or if it appears that the complaint was either not actionable in itself, or not made with sufficient accuracy, the party may supersede it, by arresting or staying the judgment.

1. Causes for a new trial, are want of notice of trial, any flagrant misbehaviour of the party prevailing, towards the jury, which may have influenced them ; where the judge certifies that the verdict is without, or contrary to, evidence, or that the damages given are too exorbitant ; or where the judge has misdirected the jury. But on a second trial, if a new jury give a similar verdict, a third trial is seldom awarded. Before however such new trial is granted, counsel are heard, on both sides, to impeach or establish the verdict, and the court give their reasons at large, why a fresh examination ought, or ought not, to be allowed.

2. Arrests of judgment may be obtained for any informality in the proceedings ; but if the judgment is not arrested within the first four days of the next term after trial, it is then too late.

Where a defendant, in an action brought against him, puts in no plea to stop the progress of the suit, or acknowledges the plaintiff's demand to be just ; or when the defendant's attorney declares he has no instructions to say any thing in defence of his client ; the plaintiff will obtain judgment by default, without the intervention of a jury : and if any of these happen in actions where the specific thing used for is recovery, as in actions of debt for a sum certain, the judgment is complete and final (as it always is, where judgment is given for the defendant). And therefore it is customary in borrowing of money, in order to strengthen the lender's security, for the borrower to execute a warrant of attorney to some attorney named by the lender, empowering him to confess a judgment by any of the ways just now mentioned, in an action of debt brought by the lender against the borrower for the specific sum due ; which judgment, when confessed, is absolutely binding and final. But where damages are to be recovered, a jury must be called in to assess them before

jore a judge, unless the defendant, to save expences, will confess the whole damages laid or set forth in the plaintiff's state of his case.

Costs naturally follow judgments, which are taxed and moderated by the proper officer of the court. But the King, and any person suing to his use, shall neither pay nor receive costs; and the Queen consort participates of the same privilege. Executors and administrators, suing in right, of the deceased, are also exempted from costs, if verdicts are given against them; and paupers, when plaintiffs, swearing themselves not worth five pounds. These are to have original writs and subpoenas *gratis*, and counsel and attorney assigned them without fee; and are excused paying costs when plaintiffs; for the counfel and clerks are bound to give their labour to *him* but not to his antagonists. To prevent trifling actions for words, assaults, battery, or trespass, it is enacted, that where the jury shall give less damages than forty shillings, the plaintiff shall be allowed no more costs than damages, unless the judge before whom the cause was tried shall certify that an actual battery (and not an assault) was proved, or that in trespass the freehold or title of the land came chiefly in question.

Judgment being entered, execution immediately follows, unless the party condemned proceeds to reverse it, by a writ in the nature of appeal.

Proceedings in nature of appeals are, 1. The writ of deceit; and, 2. A writ of error.

1. An action, in the nature of a writ of deceit, may be brought in the court of Common pleas, to reverse a judgment there had, by fraud or collusion in a real action: of this, however, enough has been observed before.

2. But the principal redress on these occasions, is by a writ of error in some superior court. He that brings the writ must generally find substantial bail as a security to prosecute, and for securing payment of costs and damages to the defendant, in case of non-succes. Courts of appeal may, on hearing the matter, reverse or affirm the Judgment of the inferior courts, but none are final except the House of Peers.

III. If judgment be not suspended or arrested by any of the methods before-mentioned, the last step is carrying that judgment into execution. Now execution is performed in different ways.

If possession of land be awarded to the plaintiff by judgment, a writ issues to the sheriff, commanding him to give the plaintiff actual possession; and will justify his breaking open doors if necessary;

necessary ; but if possession be quietly yielded up, the delivery of a twig or a turf, in the name of possession, is sufficient execution. On the recovery of a presentation to a benefice, the execution is by a writ directed to the bishop or archbishop, requiring him to admit and institute the plaintiff's clerk.

In other judgments, where something is to be done by the defendant, a special writ of execution issues to the sheriff to see it done. In cases of nuisance or indictment, the sheriff is to see them removed at the charge of the defendant. On a replevin, the distress is to be returned, but if the distress be not forthcoming, the party must either submit to a fine, pay damages, or be imprisoned. In detinue after judgment, the defendant shall be compelled to deliver the goods, or pay the value, by repeated distresses of his chattles.

Executions, in actions where money only is recovered, as a debt or damages, are against the body, lands, and goods of the defendant.

1. The debtor may be imprisoned till satisfaction be made for debt, costs, and damages, unless such debtor be a privileged person, an executor or administrator, or such other person as could not originally be held to bail : if an action be brought against the husband and wife, in execution, both of them shall be taken into custody ; but if brought only against the wife, when single, and she marries during the suit, she only shall be taken. But if judgment be recovered against a husband and wife, for the contract of the wife or her personal misbehaviour during coverture, the husband only shall be imprisoned.

When a man's person is once taken in execution, he cannot regain his liberty till he makes satisfaction ; and no other process can be sued out against his lands or goods ; only, if the defendant dies while in confinement, the plaintiff may, after his death, sue out a new execution against his lands, goods, or chattles. When a man is imprisoned on this account, if the keeper suffers him to go at large, (though for a time only), he never can take him (though the plaintiff may) and the sheriff is bound to pay the debt : but if he escapes without the keeper's knowledge, provided the sheriff can retake him before any action be brought against the sheriff, he shall not be obliged to pay the debt. A rescue of a prisoner in execution will not exempt the sheriff. But, if a defendant, charged in execution for any debt less than one hundred pounds, will surrender all his effects to his creditors (except his apparel, bedding, and tools of his trade, not amounting in the whole to the value of ten pounds) and will make oath of his punctual compliance with the

fic, than in the courts of Common Law. In executing agreements, a court of equity will compel them to be carried into strict execution, where it is not improper or impossible, instead of giving damages for their non-performance. In waste and other similar injuries, equity will order them to be prevented by injunction; it will stop proceedings of law; it will set aside fraudulent deeds, decree re-conveyances, and direct an absolute conveyance merely to stand as a security. In such matters only lies the distinction between courts of Equity and courts of Common Law. In all other respects they are the same; it being a maxim that equity follows the law, and by no means rests in the breast of the Chancellor.

The commencement of a suit in Chancery, is by bill to the Chancellor in the form of a petition, praying that he will compel the defendant to answer upon oath, to all the matter charged in the bill; and if it be to stop proceedings at law, to prevent waste and the like, it prays that he will issue an injunction, commanding the defendant to cease.

When the bill is filed, where an injunction is prayed for, upon a proper case supported by affidavits, it is generally granted, and to continue till the defendant has put in his answer; which is to be done upon oath: but, if a peer or peers answers, it is only upon their honour; and when the answer comes in, whether the injunction shall continue or not till the hearing of the cause, is determined by the court, upon argument of counsel drawn from considering the answer and affidavit together.

But in common bills, as soon as they are filed, a writ of *sub-pæna* is taken out, commanding the defendant to appear and answer the bill within a limited time, on pain of one hundred pounds. If this is not done, an attachment issues to the sheriff to take him into custody, and bring him into court. If he is not to be found, after a certain process, a sequestration issues to seize all his personal estate, and the profits of his real, and detain them, subject to the order of the court; this done, the plaintiff's bill is supposed to be admitted by the defendant, and a decree is made accordingly.

Should the defendant be taken, he is committed to prison, till he obeys the orders of the court, for which he is attached, and pays the plaintiff such costs as he has thus incurred.

As a body corporate cannot be attached, the process is to distrain their goods and chattels, rents and profits, till they obey. If a peer be the defendant, the Lord Chancellor sends a letter to him to request his attendance, together with a copy of the bill; and if he neglects to appear, he may then be served with

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æna, which is followed, if on further contempt, with a ration against his lands and goods. The same process against a member of parliament, except that the Lord ellor sends him no letter.

uld the defendant appear, if he cannot set aside the bill, plea in bar, he must answer it on oath, if the plaintiff re- it ; but this is not always done ; but should any questi- asked in the bill that seeks discovery of any thing which cation a forfeiture of any kind, or may convict a man of me, the defendant may demur to the bill, and refuse to

ie plaintiff finds in the defendant's answer sufficient matter ed on, he may go on to a hearing by proving his facts, is done by the examination of witnesses, and taking down positions in writing.

itnesses are old or in a bad state health, it is very usual bill, to preserve the testimony of such witnesses, though is depending ; for persons may wait the death of such to begin their suit. This generally happens in the case , and is called proving a will in Chancery.

n all the witnesses are examined, copies of their depo- may be had by all parties, and the cause when ready for , may be brought on either before the Chancellor or the of the Rolls. Decrees made by the Master of the Rolls, such as by the course of the court were appropriated to at seal alone, shall be valid ; subject nevertheless to be ged or altered by the Lord Chancellor, and so as they t be enrolled, till the same are signed by his lordship. party may be *subpœna'd* to hear judgment on the day r the hearing, when, if the plaintiff does not attend, his ismissed or thrown out with costs ; or if the defendant t attend, a decree will be made against him, which will , unless he pays the plaintiff's costs of attendance, and ood cause for his non-attendance. A plaintiff's bill may dismissed, on a nonsuit at law, if he suffers three terms to without making some progres in the caufe.

do not here follow the decree, as they do judgments in n Law, of course ; but are given discretionally, as the tances of the case appear more or less favourable to the hed party.

ccounts and intricacies are referred on the first hearing re is generally more than one) to a master in Chancery line ; which examination frequently lasts for years, and such

such master reports to the court the facts as they appear to him. Hence it is that Chancery suits are often of so long duration.

When a final decree is made, it is enforced, if necessary, by a commitment of the person, or a sequestration of the party's estate; but if by this decree either party thinks himself aggrieved, and it is not inrolled, he may, by petition to the Chancellor, signed by two counsel, have a re-hearing, when even new evidence may be read; but after the decree is once signed and inrolled, no re-hearing can be had, except by bill of review or appeal to the House of Lords.

A bill of review may be had on a manifest error in judgment appearing on the face of the decree, or, with leave of the court where new evidence comes out, that could not possibly be had at the time the decree was made; but not otherwise.

An appeal to the House of Lords is by petition; but no new evidence is there admitted. On hearing the former evidence the Lords either affirm or reverse the decree. This is the *dernier resort*.

BOOK IV.

ON PUBLIC INJURIES.

Chap. First.

OF CRIMES AND CRIMINALS IN GENERAL.

IN treating of crimes and misdemeanors, we will consider their nature, with the ways of preventing and punishing them; who are exempted from punishment in criminal cases; the several degrees of guilt in criminals; the different species of crimes, with their punishments; and the method of inflicting these punishments: and the first three we will treat of in this chapter.

Such a knowledge of the criminal law as we are now going to lay before the reader, that is, the nature, extent, and degrees of every crime, with the penalties annexed, is of the greatest importance to every individual; and no situation in life, no integrity of heart, or circumspection of conduct, should place a man above considering what is forbidden by the laws of his country, and to what deplorable circumstances a wilful disobedience may expose him.

I. A crime then, or misdemeanor, is the commission or omission of an act, in opposition to a public law, either forbidding or

or enjoining it. In common use of the words, crimes denote great offences ; misdemeanors, faults and omissions.

II. For the commission of acts for which some persons would be punished, there are others exempted, *viz.* 1. Those who commit them involuntarily or without any malicious design for example, idiots, lunatics, and infants. 2. Those who commit them by accident ; and, 3. Those who commit them thro' necessity or compulsion. We will enter more minutely into each.

1. Infants, under the age of discretion, from ignorance, cannot be deserving of punishment. But what is this age of discretion ? The law of England does in some cases privilege a minor under twenty-one, as to common misdemeanors : so as to escape fine, imprisonment, and the like ; and particularly in cases of omission, not repairing bridges, highways, &c. not having his fortune at command, he is supposed incapable of doing as he would ; but in riots, battery, and breaches of the peace, a minor, above the age of fourteen, is as liable to suffer, as a person of twenty-one,

With respect to capital crimes, the capacity of doing ill is not so much measured by a boy's age, as by his understanding ; the maxim is, that cunning shall compensate for want of years. Under seven years of age, an infant cannot be guilty of felony ; but at eight he may : and if it shall appear to a jury that an infant under fourteen is capable of discerning good from evil, he may be convicted and suffer death.

Lunatics and idiots are excused, as not knowing what they are about. If a man in sound mind commits a capital offence, and before arraignment loses his senses, he shall not be arraigned, because not able to plead in his own behalf ; nay, if he becomes mad after he is found guilty, and condemned, execution shall be stayed ; as, was he not insane, he might alledge something in stay of execution : besides, the execution of a madman would be no example to others, which is the end of punishment. If there be any doubt, whether the criminal be insane or not, it shall be tried by a jury ; but, a lunatic, with lucid intervals, shall answer for what he does in those intervals, as if he had no deficiency. And, if a person, who wants discretion, commits a trespass against the person or possession of another, he shall be compelled in a civil action to give satisfaction for it.

Drunkenness has been looked upon as a temporary madness ; but, this will be no excuse for criminal conduct.

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2. Those who commit unlawful acts by accident are always acquitted. Where it affects the life, we shall speak of it hereafter; but, in other matters, where any accidental mischief happens to be the consequence of a lawful act, the party is excused; but, if he be doing an *unlawful* act, and should chance to kill a man, or the like, in so doing; his want of foresight shall not exempt him from punishment.

Ignorance or mistake falls under this head: that is, when a man intending to do a lawful act, commits one that is unlawful. If this arise from ignorance or mistake of fact he stands excused; but not so, if from error in point of law. If a man designing to kill a house-breaker, in his own house, by mistake kills one of his own family, he is not criminal; but, if he thinks he has a right to kill an outlaw, and does it, it is murder; for the laws of one's country every one is bound, and presumed, to know.

3. Such as commit unlawful acts through necessity or compulsion, are also excused: a woman committing some crimes under the constraint of her husband, shall stand excused. But neither a son nor a servant can plead the command or compulsion of a parent or master. If a woman commits theft, burglary, or other civil offences, by the command of her husband, or even in his company, which the law supposes a command, she will escape punishment. But no plea of a husband's command shall excuse a woman guilty of treason, or murder. And a wife may be indicted and set in the pillory with her husband, for keeping a brothel, being an offence generally conducted by the intrigues of the female sex: and, in all cases, where a wife, acts singly, without the company or coercion of her husband, she is as much responsible for her actions, as if she was a single woman.

In time of war and rebellion, a man is justified in doing many treasonable acts by compulsion of the enemy and rebels, which in time of peace would admit of no excuse. But this will hold good only in human laws. According to divine law, no compulsion should make a man do an immoral act: and therefore, though a man could not escape even death, but by killing an innocent man; this fear, in the eye of Heaven, would not acquit him of murder; for, he ought rather to forfeit his own life, than take away that of an innocent person. In such a case, he might kill the assailant, and herein would he be justified.

So again, there are instances where, in the commission of acts, a man's will is rather passive than active; as where, in

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the choice of two evils set before him, and compelled to adopt one, he chooses the least pernicious. For example ; where a man is obliged to wound or kill another, when resistance is made to the execution of his office : as, in taking up a capital offender, or dispersing a riot. His office and the good of society here will justify the act.

III. Next, for the several degrees of guilt in criminals. In the commission then of a crime, a man may be either *principal* or *accessory*.

1. As principal, whether committing the fact, or the being present and assisting when it is done. Being present does not always imply being in the sight or hearing of, but a man is deemed to be present, if, while another is committing a robbery, he keeps watch at a proper distance. So, in the case of murder by poisoning. If a man prepares and lays the poison ; or persuades another to drink it, who is ignorant of its poisonous quality ; or gives it to him for that purpose, he is as much a principal in the murder, as if he had administered the potion. So, laying a trap for another ; letting out a wild beast with an intent to do mischief ; exciting a madman to commit murder, of which death is the consequence ; in all these cases, the party offending is a principal.

2. An accessory is one who is either *before* or *after* the crime committed, some way concerned in it, though he should neither be the chief actor, nor be present when it was done. Let us see then what offence admit of accessories *before* the fact and *after* it, and how they are to be treated.

In high-treason, all are deemed principals ; but, in petit treason, murder, and felonies of all sorts, there may be accessories, except in those offences that are suddenly committed, as manslaughter and the like, which of course can have no accessories *before* the fact. In crimes under the degree of felony, the law deems all that are concerned therein principals. An accessory, however, cannot be guilty of a higher crime than his principal. For example ; if a servant instigates a stranger to kill his master, the servant, though an accessory, is, equally with the stranger, guilty of murder : but, if the servant be present when he is killed, he will be a principal ; of course, guilty of petit treason, and the stranger will be guilty of murder.

An accessory *before* the fact, is one who, though absent at the commission of a crime, doth procure, counsel or command another to commit it. He who any ways commands or advises another to commit an unlawful act, is accessory to all the consequences of that act ; but not to any act distinct from the act

act he advised him to commit. For instance, if *A* advises *B* to beat *C*, and *B* beats him so that he dies, *B* is guilty of murder, and *A*, as accessory: but if *A* commands *B* to burn *C*'s house, and *B*, in so doing, robs it: *A*, though accessory to the burning, is not accessory to the robbery. But if the felony committed be of the same nature, only varying in circumstances; as if *A* commands *B* to poison *C*, and *B* stabs him or shoots him, *A* is still accessory; the nature of the thing commanded being the death of *C*, though the manner or circumstances of its execution varied.

In all cases where an act of parliament enacts an offence to be felony, though it mentions nothing of accessories before or after; yet those that counsel or command the offence, are accessories *before*, and those that knowingly receive the offender are accessories *after*: but when the statutes expressly mention only procurers, counsellors, or abettors: that is, accessories *before*, accessories *after* are not included.

Statutes excluding the principals from the benefit of clergy, do not thereby exclude the accessories *before* or *after*; neither doth a statute excluding accessories, thereby exclude the principals.

An accessory *after the fact*, is, when a person knowing a felony to have been committed, receives, relieves, and shelters the felon. Any assistance given to prevent the felon's being apprehended, tried, or punished, makes the assister an accessory; as furnishing a means to escape, giving him victuals or money to support him; finding him a place of shelter: protecting or rescuing him, or conveying instruments to enable him to break out of prison. But relieving him in prison with cloaths and other necessaries is no offence. Buyers and receivers of stolen goods, knowing them to be stolen, are also accessories, and may be transported for fourteen years; and buying goods at an under value is a presumptive evidence, that they were known to be stolen. Receiving of linen stolen from bleaching-grounds is a capital offence.

If one commit a felony, and come to a person's house before he be arrested, and such person suffer him to escape without arrest, knowing him to have committed a felony, this doth not make him accessory: but if he take money of the felon to suffer him to escape, this makes him accessory: and so it is, if he flouts the fore-doo, of his house, whereby the pursuers are deceived, and the felon hath opportunity to escape, this makes him an accessory: it not being the omission to apprehend him, but his assisting to the escape, that constitutes the crime.

But the felony must be complete at the time of the assistance given, or the assistant is not an accessory. If *A* wounds *B* mortally, and after the wound given, but before *B* dies, *C* receives and shelters *A*; *C* is not accessory; for till *B* dies, no felony is committed: but where a felony is complete, so strict is the law to do effectual justice, that if a parent receives and assists his child, or a child his parent, or even if the husband relieves his wife, who have either of them committed felony, the receivers become accessories after the fact. But a married woman concealing her husband does not become an accessory by so doing, she-being bound not to discover her lord.

If a wife alone, the husband being ignorant of it, receives a felon, the wife is accessory and not the husband: but if the husband and wife both receive him knowingly, it shall be adjudged only the act of the husband.

Accessories *after the fact* are allowed the benefit of clergy, (which the reader will find explained hereafter) in all cases, except in horse-stealing, and stealing linen from bleaching-grounds, which is denied to principals and accessories *before the fact* in many cases, as, among others, in petit treason, murder, robbery, and wilful burning. It is doubted whether, if a man be acquitted as principal, he can be afterwards indicted as an accessory *before the fact*, these offences being so nearly allied in guilt; but it is clearly held, that one acquitted as principal, may be indicted as an accessory *after the fact*, this being a species of guilt so very different.

Chap. Second.

OF THE DIFFERENT SPECIES OF CRIMES.

IN every well-ordered society, crimes are estimated in proportion to the mischief they do; of course, private vices, or the breach of mere absolute duties, are not the objects of municipal law, any further than as they tend, by their bad example, to corrupt the morals of the public. Drunkenness, for instance, if committed privately, is beyond the reach of human laws, but if committed publicly, its bad example makes it liable to temporal censures.

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On the other hand, there are some misdemeanors punishable by the law of the land, that are not in themselves criminal; but are made unlawful, for the benefit of the public, such as poaching, exportation of wool, and the like.

In ranging the several offences, then, punishable by the laws of this country, I will begin with those more immediately levelled at God and religion: I will next proceed to such as violate the law of nations; after this, to those that strike at the King and his government; then to such as infringe the rights of the public; and, lastly, to those which injure individuals.

I. First then for those crimes or misdemeanors more immediately levelled at God and religion, and of these there are eleven; viz. 1. Apostacy; 2. Heresy; 3. Reviling of ordinances; 4. Non-conformity; 5. Blasphemy; 6. Swearing; 7. Religious impositions; 8. Simony; 9. Sabbath-breaking; 10. Drunkenness; and, 11. Lewdness. The first four are more immediately levelled at the established religion, the rest at God and morality.

1. Apostacy is a total renunciation of christianity, by embracing either a false religion, or no religion at all. If any person educated in, or having made profession of, the christian religion, shall, by writing, printing, teaching, or advised speaking, deny the christian religion to be true, or the holy scriptures to be of divine authority, he shall, upon the first offence, be rendered incapable of holding any office or place of trust; and for the second, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, and shall suffer three years imprisonment without bail; but to give room for repentance, if, within four months after the first conviction, the delinquent will, in open court, publicly renounce his error, he shall be discharged, for that once, from all his disabilities.

2. A second offence of this kind is heresy; which consists of a denial of some of the essential doctrines of christianity, and which is liable to the censures of the ecclesiastical courts; but the legislature hath so far interposed, with respect to one species of heresy, as to declare, That if any person, educated in the christian religion, or professing the same, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons in the holy Trinity to be God, or maintain that there are more Gods than one, he shall undergo the same penalties and incapacities, as for apostacy.

3. Reviling the ordinances of the church is a third offence. Whoever reviles the sacrament of the Lord's supper, shall be

punished by fine and imprisonment ; and if any minister shall speak any thing in derogation of the book of Common Prayer, he shall, if not beneficed, be imprisoned one year for the first offence, and for life, for the second : and if he be beneficed, he shall, for the first offence, be imprisoned six months, and forfeit a year's value of his benefice ; for the second offence he shall be deprived, and suffer one year's imprisonment, and for the third, shall, in like manner, be deprived, and suffer imprisonment for life. And if any person, in plays, songs, or other open words, speak any thing in derogation, depraving, or despising of the said book, or shall openly prevent the reading of it, or cause any other service to be used in it's stead, he shall forfeit for the first offence a hundred marks ; for the second, four hundred ; and, for the third, shall forfeit all his goods and chattels, and suffer imprisonment for life.

Also seditious words, in derogation of the established religion, are indictable, as tending to a breach of the peace. No person shall have any benefit of the toleration act, who shall deny, in his preaching or writing, the doctrine of the blessed Trinity. If any person shall in any stage-play, interlude, shew, may-game, or pageant, jestingly or profanely speak or use the holy name of God or Christ Jesus or of the Holy Ghost, or of the Trinity, he shall forfeit ten pounds, half to the King and half to him that shall sue.

4. Nonconformity to the worship of the church of England, is another offence. Nonconformists are of two sorts : those who absent themselves from divine service, and attend the service of no other persuasion ; and those who offend through a mistaken or perverse zeal, as papists and dissenters. The first forfeit one shilling to the poor every Sunday they so absent themselves, and twenty pounds to the King, if they absent for a month together ; and if they absent from their own parish-church, they shall prove where they go to church. And if they keep an inmate in their houses so irreligiously disposed, they forfeit ten pounds a month. With respect to protestant dissenters ; no penal laws made against popish recusants (except the test acts) shall extend to any dissenters, other than papists, and such as deny the Trinity : provided, 1. That they take the oaths of allegiance, and supremacy (or being Quakers make a similar affirmation) and subscribe the declaration against popery ; 2. That they repair to some congregation certified to and registered in the court of the bishop or archdeacon, or at the county sessions ; 3. That the doors of such meeting-houses shall be unlocked, unbarred, and unbolted ; in default of which, the persons meeting there,

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are still liable to all the penalties of the former acts. Dissenting teachers, in order to be exempted from the penalties on the statutes, are also to subscribe the articles of religion, with an express exception of those relating to the government and powers of the church, and to infant baptism. Thus all persons, except papists and opposers of the Trinity, are at full liberty to act according to their own consciences in matters of religious worship. And it is also enacted, That if any person shall wilfully, maliciously, or contemptuously disturb any congregation assembled in any church or permitted meeting-house, or shall misuse any preacher or teacher there, he shall be bound over to the sessions of the peace, and forfeit twenty-pounds. No mayor or principal magistrate must appear at any dissenting meeting with the ensigns of his office, on pain of disability to hold that or any other office; no person shall teach any school, unless licensed by the ordinary, and unless he subscribe a declaration of conformity to the church of England, and reverently frequent divine service established by the laws of this kingdom.

The laws in force against the papists are many.

Persons professing the Roman Catholic Religion, besides the former penalties for not frequenting the parish-church, are disabled from taking any lands either by descent or purchase, after twenty-one years of age, unless they take the oath of allegiance and supremacy, as specified in an act of 18 Geo. III. They must, at the age of twenty-one, register their estates before acquired, and all future conveyances and wills relating to them; they are incapable of presenting to any church living, or granting to any other person any avoidance of the same; and they may not keep or teach any school, under pain of perpetual imprisonment, unless they first take the oath prescribed in the said 18 Geo. III.

And if they voluntarily hear or say mass, without having first taken the oath above-mentioned, they forfeit; the one two hundred, the other one hundred marks, and each shall suffer one year's imprisonment. If any persons sends another abroad to be educated in the popish religion, or contributes to his maintenance when there, both the persons sending, sent, and contributing, are liable to certain penalties, as has before been observed. Nay, it is high treason should these errors be aggravated by apostasy or perversion; that is, where a person is reconciled to the see of Rome, or procures the reconciliation of others.

Popish recusants, convicted in a court of law, of not attending the service of the church of England, besides the penalties,

&c. above-mentioned, are considered as excommunicated; can hold no office or employment; if they keep arms in their houses, such arms may be seized by a justice of the peace; they may not come within ten miles of London, under the penalty of one hundred pounds; cannot sue either in law or equity; may not travel five miles from home, except by licence, on pain of forfeiting all their goods, and may not appear at court, on pain of one hundred pounds. No marriage or burial of such recusant, or baptism of his child, shall be performed, but by the clergy of the church of England, under further heavy penalties. A married woman, when recusant, forfeits two-thirds of her jointure or dower, may not be executrix or administratrix to her husband, nor have any share of his goods; and during the coverture, may be imprisoned, unless her husband redeem her at the rate of ten pounds a month, or the third part of all his lands. All other recusants, within three months after conviction, must either submit and renounce their errors, or if required by four justices must abjure, and renounce the realm, and if they do not depart, or if they return without a licence from the King, they shall suffer death. Refusing to make the declaration against popery, enjoined by 30 Car. II. st. 2. when tendered by a proper magistrate, makes the party, if he resides within ten miles of London, an absolute recusant convict, or, if at a greater distance, suspends him from having any seat in parliament, keeping arms in his house, or any horse above the value of five pounds.

To be a *recusant*, doth not necessarily imply the being of a *papist*; but a *recusant* is any person, who refuses to go to church, and worship God after the manner of the church of England: a *papist recusant* is a papist who refuses, and a *papist recusant convict* is a papist legally convicted thereof.

Popish bishops or priests celebrating mass, or exercising any part of their functions in England, except in the houses of ambassadors, are liable to perpetual imprisonment, unless they have before taken and subscribed the above-mentioned oath set forth in 18 George III. And further, any popish priest, born in the dominions of the crown of England, who shall come over hither from beyond sea (unless driven by stress of weather, and tarrying only a reasonable time) or shall be in England three days, without conforming and taking the oaths, is guilty of high treason: and all persons harbouring him are guilty of felony, without benefit of clergy.

To secure the religion of this country against all species of nonconformists, the *corporation* and *test* acts were passed. By the

the corporation act, no person can be elected to any office relative to the government of any city or corporation, unless within a twelvemonth before, he has received the sacrament of the Lord's supper, according to the form of the church of England, and take the oaths of allegiance and supremacy. The test act enjoins all officers, civil and military, to take the oaths, and make the declaration against transubstantiation, in any of the King's Courts at Westminster, or at the quarter-sessions, within six calendar months after their admission, and also within the said time to receive the sacrament of the Lord's supper, according to the usage of the church of England, in some public church, immediately after divine service and sermon, and to deliver into court a certificate thereof, signed by the minister and churchwardens, and also to prove the same by two credible witnesses, upon forfeiture of five hundred pounds, and disability to hold the said office.

5. The following offences are levelled more immediately against God; the former were rather attacks upon religion. Of these the first is Blasphemy; denying the being and providence of the Almighty, or contumeliously reproaching our blessed Saviour; also profane scoffing at scripture, and exposing it to contempt and ridicule. These are offences punishable at Common Law, by fine and imprisonment, or other infamous, corporal punishment.

6. The next offence is common Swearing. Every labourer, sailor, or soldier, profanely cursing or swearing, shall forfeit one shilling, every other person under the degree of a gentleman two shillings, and every gentleman or person of superior rank five shillings, to the poor of the parish; and on a second conviction, double, and for every subsequent offence, treble the sum first forfeited; with all charges of conviction; and in default of payment shall be sent to the house of correction for ten days. If in any stage-play, interlude, or shew, the name of the Holy Trinity, or any of the persons therein be jestingly or profanely used, the offender shall forfeit ten pounds; one moiety to the King, and the other to the informer.

7. Religious impostors are another species of offenders; such as falsely affect to have a commission from Heaven, and frighten the people by denunciations of judgment: such are punishable in the temporal courts with fine, imprisonment, and other infamous, corporal punishment.

8. Simony also may be ranked among these offences. If any patron, for money, or any other corrupt consideration or promise, shall present, admit, institute, install, or collate any person to

an ecclesiastical benefice or dignity, both the giver and taker shall forfeit two years value of the benefice or dignity; one moiety to the King, and the other to any one who will sue for the same. If persons also corruptly resign or exchange their benefices, both the giver and the taker shall, in like manner, forfeit double the value of the money or corrupt consideration; and persons who shall corruptly ordain or license any minister, or procure him to be ordained or licensed, shall forfeit forty pounds, and the minister ten pounds, besides being rendered incapable of holding any ecclesiastical preferment for seven years afterwards. Corrupt elections and resignations in colleges, hospitals, and other eleemosynary corporations, are also punishable, by penalty of double the value, vacating the office, and forfeiting the right of election for that term to the crown.

9. Profanation of the Sabbath is punishable also by the statutes. No fair or market shall be held on the principal festivals, Good-Friday, or any Sunday, except the four Sundays in harvest, on pain of forfeiting the goods exposed to sale. No person shall assemble, out of their own parishes, for any sport whatsoever on a Sunday, nor in their own parishes, shall use any bull or bear-baiting, interludes, plays, or other *unlawful* exercises or pastimes, on pain of forfeiting three shillings and four-pence to the poor. No person is allowed to work on the Lord's day, or use any boat or barge, or expose any goods to sale; except meat in public-houses, milk and mackarel, at certain hours, and works of necessity or charity, on pain of five shillings; nor shall any drover, carrier, or the like, travel on Sundays, on pain of forfeiting twenty shillings.

10. Drunkenness, for the first offence, is punished with a fine of five shillings, or sitting six hours in the stocks, and being bound over to good behaviour, in a bond of ten pounds for the second; and there are many acts to prevent tippling.

11. The last offence of an immoral kind I shall mention is Lewdness. Frequenting houses of ill fame is indictable, and public indecency, grossly scandalous, is punishable by fine and imprisonment.

Besides what has been said of Bastard children, two justices, may take order for the punishment of the mother and reputed father. The woman may be committed to the house of correction, there to be punished and set on work for one year; and in case of a second offence, till she find sureties never to offend again. But these punishments can only be inflicted, if the bastard becomes chargeable to the parish.

II. We

II. We are next to consider offences against the, Law of Nations. These are of three kinds, *viz.* Violation of safe-conducts; 2. Infringement of the privileges of ambassadors; and, 3. Piracy.

1. Violation of passports granted by the King or his ambassadors in time of war to the subjects of a foreign prince, with whom we are at war; or committing acts of hostility against those with whom we are not at war, are such breaches of public faith, as every state thinks proper to punish. If any of the King's subjects attempt or offend, upon the sea, or any part within the King's obedience, against any stranger in amity, league, or truce, or under safe-conduct; and especially by attaching his person, or spoiling him, or robbing him of his goods; the Lord Chancellor, with any of the judges, may cause a full restitution and amends to be made to the party injured; and the offender may be punished by indictment,

2. With respect to the rights of Ambassadors, all process whereby the person of any ambassador, or of his domestic servant, may be arrested, or his goods distrained or seised, shall be utterly null and void; and all persons, prosecuting, soliciting, or executing such process, shall suffer such penalties as the said judges shall think fit.

3. Piracy or robbery upon the high seas is as much felony as a robbery on the highway. Some other offences are also made capital. If any natural born subject commits any act of hostility upon the high-seas, against others of his Majesty's subjects, under colour of a commission from any foreign power; this, though in an alien it would be only an act of war, in a subject shall be construed piracy. And further, any commander or other seafaring person betraying his trust, and running away with any ship, boat, ordinance, ammunition, or goods; or yielding them up voluntarily to a pirate, or conspiring to do these acts; or any person assaulting the commander of a vessel to hinder him from fighting in defence of his ship, or confining him, or making or endeavouring to make a revolt on board, shall for each of these offences suffer death; whether he be principal, or merely accessory, by setting forth such pirates, or abetting them before the fact, or receiving or concealing them or their goods after it. And principals are expressly excluded from the benefit of clergy. Trading with known pirates, or furnishing them with stores, or ammunition, or fitting out any vessel for that purpose, or in any wise consulting, combining, confederating, or corresponding with them, or forcibly boarding any merchant vessel, though without seizing or carrying her off, and destroy-

ing or throwing any of the goods overboard; shall be deemed piracy: and such accessories to piracy as are described by the 11 and 12 of W. III. are declared to be principal pirates; and all pirates convicted by virtue of this act are felons without benefit of clergy. To encourage the defence of trading vessels against pirates, the commanders or seamen, and the widows of such seamen as are slain in any piratical engagement, shall be entitled to a bounty, to be divided among them, not exceeding one fiftieth part of the value of the cargo on board: and such wounded seamen shall be entitled to the pension of Greenwich Hospital. And if the commander shall behave cowardly, by not defending the ship, if she carries guns or arms, or shall discharge the mariners from fighting, so that the ship falls into the hands of pirates, such commander shall forfeit all his wages, and suffer six months imprisonment. And any natural-born subject or denizen, who in time of war shall commit hostilities at sea against any of his fellow-subjects, or shall assist an enemy on that element, shall be construed a pirate.

III. We proceed now to those offences that strike at the King and his government, and these are of four kinds; 1. Treason; 2. Felonies injurious to the prerogative; 3. *Præmunire*; and, 4. Other misprisions and contempts.

1. First then, for Treason which here is called *high-treason* in contradiction to that *petit* treason or treachery, that induces a wife to murder her husband, a servant his master, or a clergyman his bishop.

It is high-treason to compass or imagine the death of the King, his Queen or their eldest son and heir. By the King is understood, the person on the throne, whether a legal king or a usurper; there being a temporary allegiance due even to a usurper, for the temporary protection he affords the people. No King, out of possession of the throne, however legal his claim to it may be, is entitled to our allegiance; so that should a usurper be on the throne, the subject is excused and justified in obeying and assisting him. Should a King therefore resign or abdicate the crown, no treason can be committed against him.

By compassing or imagining the death of the King, &c. is understood a design to destroy him, whether such a design be carried into execution or not. To provide weapons or ammunition to kill the King, or to conspire to imprison him by force, and to assemble for the purpose, from a presumption that worse is intended, are sufficient overt or open acts of high-treason; but mere words spoken by an individual, without any treasonable act or design then in agitation, are not held to amount to treason.

To have carnal knowledge of the King's wife, eldest daughter, or his eldest son's wife, though with their own consent, is high-treason in both parties. This law is plainly to guard the blood-royal from any suspicion of bastardy; for it is not treason to violate a queen or prince's dowager.

It is also treason to levy war against the King in his realms: under which words is held taking up arms under a pretence to reform religion or the laws; or to remove evil counsellors, or other grievances, whether real or pretended. Defending a castle against the King's forces, is also a levying of war. So also is an instruction to pull down *all* inclosures, *all* chapels, ~~and~~ brothels, or the like; but a tumult to pull down a particular building is held only to be a riot, it is the universality of the design that makes it rebellion. A bare conspiracy to levy war does not amount to treason, unless it be attended with compassing or imagining the King's death.

A man is also guilty of high-treason, if he be adherent to the King's enemies in his realm, giving to them aid and comfort; such as by giving enemies, at open war, intelligence; sending them provisions; selling them arms or ammunition; treacherously surrendering a fortress, or the like; but these must be proved by some overt act. Giving assistance to foreign pirates or robbers invading our coast, without any commission from any foreign power, is also clearly treason; and so also is the same aid or assistance given to our fellow-subjects in rebellion at home, which would be treason, if given to our open enemies abroad; it coming under the description of levying war against the King. But to relieve a rebel fled out of the kingdom is not treason, for criminal statutes are always construed strictly: neither is it treason to join either rebels or enemies within the kingdom, if we do it through compulsion or fear; provided we quit them whenever a safe opportunity occurs.

Counterfeiting the King's great or privy-seal is also high-treason: so is it also to counterfeit the King's money, or to bring false money into the realm counterfeit to the money of England, knowing the money to be false, to merchandize and make payment withal. Also if the King's own minters alter the standard or alloy established by law. But our own gold or silver coin are only held to be within this statute; and uttering it, without importing it, is not within the statute. It is, however, made high-treason to falsely forge or counterfeit any such kind of coin of gold or silver as is not the proper coin of this realm, but shall be current within this realm, by consent of the crown; or to falsely forge or counterfeit the sign-manual, privy signet, or
privy

privy seal : and, to bring into this realm such false or counterfeit foreign money, being current here, knowing the same to be false, with intent to utter the same for payment : but this money must be such as is made current here by proclamation. Portugal money was never current by proclamation, of course, counterfeiting Portugal money does not amount to high-treason, but is a crime of an inferior degree. Clipping, washing, rounding, or filing, for gain's sake, any of the money of this realm, or other money suffered to be current here, is high-treason ; so impairing, diminishing, falsifying, scaling, and lightening it. ~~Whoever~~, without proper authority, shall knowingly make or mend, or assist in so doing, or shall buy, sell, conceal, hide, or knowingly have in his possession any implements of coinage, or other tools or instruments proper only for the coinage of money, or shall convey the same out of the King's mint ; he, together with his counsellors, procurers, aiders, and abettors, shall be guilty of high-treason. It is also an equal crime to mark any coin on the edges with letters or otherwise, in imitation of those used in the mint ; or to colour, gild, or case over any coin resembling the current coin, or even round blanks of base metal. If any person colours or alters any shilling or six-pence, either lawful or counterfeit, to make them respectively resemble a guinea or half-guinea, or any half-penny or farthing, to make them respectively resemble a shilling or six-pence, he shall be adjudged guilty of high-treason ; but the offender shall be pardoned, if (out of prison) he discovers and convicts two other offenders of the same kind.

It is high-treason also if a man slay the chancellor, treasurer, or the King's justices of the one bench or the other, justices in Eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices. Mere wounding or attempting to kill is not included under these cases ; nor do they extend to the barons of the Exchequer, as such ; but the lord-keeper or commissioners of the great seal seem to be within them.

To defend the pope's jurisdiction in this realm is, for the first offence, a heavy misdemeanour, and for the second high-treason. If any popish priest, born in the dominions of the crown of England, shall come hither from beyond the seas, unless driven by stress of weather, and departing in a reasonable time : or shall tarry here three days without conforming to the church, he is guilty of high-treason. And if any natural-born subject be withdrawn from his allegiance and reconciled to the pope or see of Rome, or any other prince or state, both he and all

all such as procure such reconciliation shall incur the guilt of high-treason. Every popish priest, of course, renounces his allegiance to his temporal prince, the moment he takes orders, and is held to be reconciled to the pope : an obstinate defence also of the pope's authority here, or a formal reconciliation to the see of Rome, is construed to be a withdrawing from one's natural allegiance.

If any person shall endeavour to deprive or hinder any person, being the next in succession to the crown, according to the limitation of the act of settlement, from succeeding to the crown, and shall maliciously and directly attempt the same by any overt act, such offence shall be high-treason. And if any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm that any other person hath any right or title to the crown of this realm, otherwise than according to the act of settlement ; or that the King of this realm, with the authority of parliament, are not able to make laws and statutes to bind the crown, and the descent thereof, such person shall be guilty of high-treason.

So much for the crime : the punishment is dreadful. The offender is to be drawn, that is, dragged to the gallows. He is to be hanged by the neck, and then cut down alive : his entrails are to be taken out and burned while he is yet alive ; his head to be cut off ; his body to be divided into four parts, and his head and quarters to be at the King's disposal.

The King may and frequently has discharged, where any nobleman is attainted, all the punishment, except that of beheading. In the case of coining, the punishment in men is milder, being that only of being drawn and hanged till dead ; and as decency forbids exposing and mangling the bodies of women, their punishment is to be drawn to the gallows, and there hanged.

Attainder, forfeiture, and corruption of blood, are the consequences of this judgment : but this we shall speak of hereafter.

2. The next offences to be treated of, under those against the King and government, are felonies injurious to the royal prerogative.

Felony implies forfeiture, or an act done at the price of one's estate, to which some capital or other punishment is annexed, according to the degree of guilt ; but I shall consider it as implying a capital offence.

Of such felonies as are injurious to the King's prerogative, there

there are six; viz. Offences relating to coin, not amounting to treason; Felonies against the King's council; Serving foreign powers; Embezzling or destroying the King's armour or warlike stores; and, Desertion from the army, in time of war.

With respect to the coin, there are some misdemeanors not amounting even to felony. None shall bring any foreign coins of base metal, into the realm, on pain of forfeiture of life and goods. No sterling money shall be melted down, on pain of forfeiture thereof. None shall bring false or ill money into the realm, on pain of forfeiture of life and member by the persons importing, and the searchers permitting such importation. To make, coin, buy, and bring into the realm any gally half-pence, fuskins, or dotkins, in order to utter them, is felony; and knowingly to receive or pay either them or blanks, is forfeiture of a hundred shillings. Forgers of foreign coin, though not made current here by proclamation, shall (with their aiders and abettors) be guilty of misprision of treason, a crime that will be explained by-and-by. Melting down any current silver money, shall be punished with forfeiture of the same, and also double the value, and the offender, if a freeman of any town, shall be disfranchised: if not, shall suffer six months imprisonment. If any person buys or sells, or knowingly has in his custody any chippings, or filings of the coin, he shall forfeit the same, and five hundred pounds, one moiety to the King, and the other to the informer; and be branded in the cheek with the letter R. If any person shall blanch or whiten copper for sale (making it resemble silver) or buy, or sell, or offer to sale any malleable composition, which shall be heavier than silver, and look, touch, and wear like gold, but be beneath the standard; or if any person shall receive or pay any counterfeit or diminished, milled money of this kingdom, not being cut in pieces (an operation which all persons are empowered by statute to do, when tendered to them) at a less rate than it shall import to be of; all such persons shall be guilty of felony. If any person shall utter or tender in payment any counterfeit coin, knowing it so to be, he shall, for the first offence, be imprisoned six months, and find sureties for his good behaviour for six months more; for the second offence, shall be imprisoned two years, and find sureties for two years more; and for the third offence, shall be guilty of felony, without benefit of clergy. (It behoves every one to attend to this law, as many are guilty of putting off a bad piece of money, saying, it shall, go as they received it). Also if a person knowingly tenders in payment any counterfeit money

money, and at the same time has more in his custody, or shall, within ten days after, knowingly tender other false money, he shall be deemed a common utterer of counterfeit money, and shall, for the first offence, be imprisoned one year, and find sureties for his good behaviour for two years longer; and for the second, be guilty of felony without benefit of clergy. Persons counterfeiting copper half-pence or farthings, with their abettors, or buying, selling, receiving, or putting off any counterfeit copper money (not being cut in pieces or melted down) at a less value than it imports, shall be guilty of simple felony. And by a temporary statute, if any quantity of money, exceeding the sum of five pounds, being or purporting to be the silver coin of this realm, but below the standard of the mint in weight and fineness, shall be imported into Great Britain or Ireland, the same shall be forfeited in equal moieties to the crown and prosecutor.

Felonies against the King's council are, where any sworn servant of the King's household conspires or confederates to kill any lord of this realm, or other person sworn of the King's council. And assaulting the King, wounding, or attempting to kill any privy-counsellor in the execution of his office, is felony without benefit of clergy.

It is felony for any person whatever to go out of the realm to serve any foreign prince, without having first taken the oath of allegiance before his departure. It is felony also for any gentleman or person of higher degree, or who hath borne any office in the army, to go out of the realm to serve such foreign prince or state, without previously entering into a bond, with two sureties, not to be reconciled to the see of Rome, or enter into any conspiracy against his natural sovereign. If any subject of Great-Britain shall enlist himself, or if any person shall procure him to be enlisted in any foreign service, or detain or embark him for that purpose, without licence under the King's sign-manual, he shall be guilty of felony, without benefit of clergy; but if the person so enlisted or enticed, shall discover his seducer within fifteen days, so as he may be apprehended and convicted of the same, he shall be indemnified. And to serve under the French King as a Military officer, and to enter into the Scotch Brigade in the Dutch service, without previously taking the oaths of allegiance and abjuration, shall be a forfeiture of five hundred pounds.

Embezzling or destroying the King's armour or military stores, is also felony; and if any person, having the charge or custody of the King's armour, ordnance, ammunition, or habiliments

of

of war, or of any victual provided for victualling the King's soldiers or mariners ; shall either for gain, or to impede his majesty's service, embezzle the same to the value of twenty shillings, such offence shall be felony without benefit of clergy ; and equally so for naval stores.

Desertion, in time of war, from either land or sea-service, either in England or abroad, is felony without benefit of clergy.

3. Another species of offence against the King and his government, is *præmunire*. To put an end to the pope's appointing to bishopricks, it is enacted, That if the dean and chapter refuse to elect the person named by the King, or if any archbishop or bishop refuse to confirm or consecrate him, they shall incur the penalties of the statutes of *præmunire*, which were formed in the reign of Richard II. What these penalties are will be shewn below. To refuse the oath of supremacy will incur the same penalties : and, to defend the pope's jurisdiction in this realm is a *præmunire* for the first offence, and high-treason for the second. To import any *agnus Dei*, crosses, beads, or other superstitious things, pretended to be hallowed by the bishop of Rome, and tender the same to be used ; or to receive the same with such intent, and not discover the offender : or, if a justice of the peace, knowing thereof, shall not, within fourteen days, declare it to a privy-counsellor, they all incur a *præmunire* : but, importing or selling mass books, or other popish books, is only a penalty of forty shillings. To contribute to the support of a jesuits college, or any popish seminary beyond sea, or to the maintenance of any jesuit or popish priest in England, is liable also to the pains of *præmunire*.

Acting as a broker or agent, in any usurious contract, where above ten per cent. interest is taken, incurs the penalties of *præmunire*. So does it to obtain any stay of proceedings, other than any arrest of judgment, or writ of error, in any suit for a monopoly ; also, to obtain an exclusive patent for the sole making or importation of gunpowder or arms, or to hinder others from importing them ; also, to assert maliciously and advisedly, by speaking or writing, that both or either House of Parliament have a legislative authority without the King. To send any subject of this realm a prisoner into parts beyond the seas is a *præmunire*, incapable of pardon. Persons of eighteen years of age, refusing to take the new oaths of allegiance as well as supremacy, on tender by the proper magistrate, are liable to the pains of *præmunire* ; and, serjeants, counsellors, proctors, attorneys, and all officers of courts, practising without

out having taken the oaths of allegiance and supremacy, and subseribed the declaratiois against popery, are guilty of a *præmunire*, whether the oaths be tendered or not. It is a *præmunire* to assert maliciously, and directly, by preaching, teaching, or advisedly speaking, that any person, other than according to the acts of settlement and union, hath any right to the throne of these kingdoms, or that the King and Parliament cannot make laws to limit the descent of the crown. If the assembly of peers of Scotland, convened to elect their sixteen representatives, shall presume to treat of any other matter, save only the election, they incur the penalties of a *præmunire*: so do all such as knowingly and wilfully solemnize, assist, or are present at, any forbidden marriage, of such of the descendants of the body of King Geo. II. as are, by that act, prohibited to contract matrimony without the consent of the crown.

The punishments of *præmunire* are as follow: "That, from the conviction, the offender shall be out of the King's protection, and his lands and tenements, goods and chattels, forfeited to the King, and that his body shall remain in prison at the King's pleasure, or (according to some,) during life." An offender convicted of *præmunire*, can bring no action for any private injury, let it be ever so atrocious: and no man, knowing him to be guilty, can with safety, give him aid or relief.

4. A fourth species of offences against the King and his government, are called Misprisions and contempts.

Misprisions are of two kinds, *negative* and *positive*. Negative misprisions are the concealing what the law enjoins to be revealed; positive, the committing what the law absolutely prohibits.

Misprision of treason, is one of the negative kind, and consists in the mere knowing and concealing of treason, though no assent be given thereto: for assent makes the assenter a principal. Every man apprised of treason, is bound to reveal it, as soon as convenient, to some justice of the peace. This will acquit him of misprision. But, if there be any probable circumstances of assent: that is to say, if a man goes to a treasonable meeting, knowingly, and being at such a meeting once by accident, and hearing a treasonable conspiracy, meets a second time, and hears more, and conceals it; the law deems this an assent, and the concealer is guilty of high-treason.

Forgers of foreign coin, not current in this kingdom, their aiders, abettors, and procurers, are all guilty of misprision of treason;

treason; the punishment of which is, loss of the profits of lands during life, forfeiture of goods, and imprisonment for life.

Misprision of felony is, as in treason, the concealing a known felony, to which a man might never assent: the punishment for which is, in a public officer, imprisonment for a year and a day; in a common person, imprisonment for a less time, at the discretion of the judge; and in both, fine and ransom at the King's pleasure: by which King's pleasure, here, and in all cases, is understood, at the pleasure of the judges in the King's courts of justice.

Concealing a treasure-trove, which belongs to the King or his grantees, is also a negative misprision, and punishable with fine and imprisonment.

Positive misprisions are called contempts or high misdemeanors; of these, the mal-administration of state-officers is one, and usually punished by banishment, imprisonment, fines, or perpetual incapacity to serve again, and this through the mode of parliamentary impeachment. The offence of embezzling the public money is also of this kind, and subjects the offender to a discretionary fine and imprisonment.

Refusing to assist the King by advice in council, if called upon, or by personal service in war, against a rebellion or invasion; omitting to join the *posse comitatus*, at the request of the sheriff or justices, which all persons, at fifteen years of age, under the degree of nobility, and able to travel, are bound to do; are contempts against the King's prerogatives: so is taking a pension from any foreign prince, without the King's consent; disobeying the King's lawful commands, whether issued by writs from the courts of justice, by summons, to attend his privy-council, or by letters, commanding the return of any one abroad, (in disobedience to which, his lands shall be seised till he does return, and himself punished afterwards,) or by his proclamation, or writ of *ne exeat regnum*, commanding him to stay at home: so also is disobedience to any act of parliament, where no penalty is inflicted: and in all these cases the contempt is punishable by fine and imprisonment, at the discretion of the judge.

Writing, or speaking against the King, cursing, or wishing him ill, defaming him, or doing any thing that may either lessen him in the opinion of his subjects, or weaken his government, is a contempt and misprision against the King's person and government. To drink to the pious memory of a traitor,

or,

receiving such goods : compounding felony ; bartry ; maintenance ; champetry ; compounding informations ; conspiracy ; perjury ; bribery ; embracery ; false verdicts ; negligence of duty ; oppression ; and extortion.

Embezzling or vacating records, or falsifying certain other proceedings in a court of judicature. If any clerk or other person shall wilfully take away, withdraw, or avoid any record or process in the superior courts of justice in Westminster-Hall, by reason whereof the judgment shall be reversed, or not take effect, it is felony not only in the principal actors, but also in their procurers and abettors. To acknowledge any fine, recovery, deed enrolled, statute, recognizance, bail, or judgment, in the name of another person not privy to the same, is felony without benefit of clergy. This law extends only to the courts themselves; but, to personate any other person, (as bail) before any judge of assize, or other commissioner authorized to take bail in the country, is also felony.

To prevent *abuses in gaolers*, if any gaoler, by too great dures of imprisonment, makes any prisoner, that he hath in ward, accuse and turn evidence against some other person, he is guilty of felony.

In *obstructing the execution of arrests in criminal process*, it hath been held, that the party opposing such arrests, becomes a partaker of the crime, that is, an accessory in felony and a principal in high-treason. And persons oppposing the execution of any process, in pretended privileged places, within the bills of mortality in London ; such as White-Friars, the Savoy and the Mint ; or, abusing any officer in his endeavours to execute his duty therein, so that he receives bodily hurt, shall be guilty of felony, and transported for seven years ; and persons in disguise, joining in or abetting any riot or tumult on such account, or opposing any process, or assaulting and abusing any officer executing, or for having executed the same, shall be felons without benefit of clergy.

A criminal's *escaping* when arrested, is punishable by fine and imprisonment ; so is the officer, should he suffer such escape, either by negligence or connivance ; the criminal is punishable by fine, and the officer is liable to be punished in the same degree as the criminal would, if convicted, whether it be for treason, felony, or trespass, and this whether the prisoner was actually committed to gaol, or only under an arrest. But though the felony for which the prisoner was committed be not within clergy, the officer shall have the benefit of clergy. The officer, however, cannot thus be punished, unless the criminal so escaping

escaping had received judgment, or been attainted upon verdict, confession, or outlawry of the crime for which he was in custody. Though before the conviction of the prisoner, the officer for such neglect may be punished by fine and imprisonment.

Breaking out of prison, when committed for a capital offence, is felony in the offender; and if in confinement, either in goal or the stocks, for any lesser charge, it is punishable with fine and imprisonment.

Rescuing a prisoner from an arrest or imprisonment, makes a man equal in guilt with the person so arrested or imprisoned, and he is liable to be arraigned and punished for the same, in an equal degree, if the person rescued had received judgment or been attainted. If five or more persons assemble to rescue any retailers of spirituous liquors, or to assault the informers against them, they are guilty of felony, and shall be transported for seven years. Conveying to any prisoner in custody for treason or felony, any arms, instruments of escape, or disguise, without the knowledge of the gaoler, though no escape be attempted, or any way to assist such prisoner to attempt an escape, though no escape be actually made, is felony and punishable with transportation for seven years: or, if the prisoner be in custody for petit-larceny, or other inferior offence, or charged with a debt of one hundred pounds, it is a misdemeanour, and punishable with fine and imprisonment. And, by the several acts of transportation, destroying turnpikes, &c. smuggling, murder, and the black-act, to rescue or attempt to rescue any person committed for the offences, in those acts is felony, without benefit of clergy; and to rescue, or attempt to rescue, the body of a felon executed for murder, is single felony, and punishable with transportation for seven years. Nay, if any person be charged with any of the offences in the black-act, and being required by order of the privy-council to surrender, neglects so to do for forty days, both the offender and all that knowingly conceal, aid, abet, or succour him, are deemed guilty of felony, without benefit of clergy.

Returning from transportation before the expiration of the term for which the offender was ordered to be transported, or had agreed to transport himself, is, by several statutes, made felony also without benefit of clergy; as is also the assisting such a person to escape from the persons conveying them to the port of transportation.

Taking rewards under a pretence of helping the owner to his goods stolen, is equally criminal with the stealing; and the offender shall suffer as the felon who stole them, unless he causes such

such principal felon to be apprehended and tried, and gives evidence against him.

Receivers of Stolen Goods, knowing them to be stolen, are deemed accessory to the theft and felony, and are punishable accordingly, *with* the principal, or *after* the principal is convicted; and such receivers may be prosecuted for a misdemeanour, and punished by fine and imprisonment, though the principal felon be not *before* taken, so as to be prosecuted and convicted. In the case of stolen lead, iron, and other metals, such offence is punishable by transportation for fourteen years; persons also having lead, iron, and other metals in their custody, and not giving a satisfactory account how they came by the same, are guilty of a misdemeanour, and punishable by fine and imprisonment. And all knowing receivers of stolen plate or jewels, taken by robbery on the highway, or when a burglary accompanies the stealing, may be tried as well *before* as *after* the conviction of the principal, and whether he be in or out of custody; and if convicted, shall be adjudged guilty of felony, and be transported for fourteen years.

Theft-bote, or compounding of felony, (that is, where the person robbed, not only knows the robber, but also takes his property again, or receives other amends, on agreement not to prosecute,) is punishable as a misdemeanour with fine and imprisonment. Nay, advertising a reward for the return of things stolen, with "No questions asked," or words to that effect subjects the advertiser and printer, each, to a penalty of fifty pounds.

Frequently exciting and occasioning suits and quarrels, either at law or otherwise, called common *battery*, is an offence punishable with fine and imprisonment. But no one can be a barrator in respect of one act only. If any one, who hath been convicted of forgery, perjury, subornation, or common battery, shall practice as an attorney, solicitor, or agent in any suit; the court, upon complaint, shall examine it in a summary way; and if proved, shall direct the offender to be transported for seven years. Suing another in the name of a fictitious plaintiff, if in any of the King's superior courts, is a high contempt and punishable at their discretion; in the lower courts, it is punishable by six months imprisonment, and treble damages to the party injured.

Officious intermeddling in a suit that we have no concern in, by maintaining or assisting either party with money to carry it on, called *maintenance*, is an offence also against public justice, and punishable by fine and imprisonment, and with a forfeiture

of ten pounds. But a man may support the suit of his near relation, his servant, or his poor neighbour, from charity and compassion, with impunity.

Champerty is a species of maintenance, and punishable in the same manner; being the agreement of any one with a plaintiff or defendant, to pay the expences of a suit, on condition of dividing the property sued for between them, in case they prevail; which is a kind of purchasing a suit or a right of suing. To prevent this, no man at common law can assign any right in a thing, unless he has that thing absolutely in possession; and by statute, no one shall sell or purchase any pretended right or title to any land, unless the vender hath received the profits thereof, for one whole year before such grantor hath been in actual possession of the land, or of the reversion or remainder; on pain that both purchaser and vender shall forfeit the value of such land to the King and prosecutor. These offences relate to civil suits only. But,

Compounding of informations upon penal statutes is a similar offence in criminal causes: to prevent which, it is enacted, That if any person informing, under pretence of any penal law, makes any composition without leave of the court, or takes any money or promise from the defendant to excuse him, he shall forfeit ten pounds, shall stand two hours on the pillory, and shall be forever disabled to sue in any popular or penal statute.

A *conspiracy* to indict an innocent person of felony is a farther abuse of justice. If such innocent person be thus maliciously indicted and acquitted, he may either have a civil action against the conspirators, or he may indict them at the suit of the King, and punish them by imprisonment, fine, and pillory. Sending letters, threatening to accuse any one of a crime punishable with death, transportation, pillory, or other infamous punishment, in order to extort money, or other valuable chattels, is punishable, at the discretion of the court, with fine, imprisonment, pillory, whipping, or transportation for seven years.

Wilful and corrupt *perjury* is another offence under this head; but the law takes notice of no perjury, but such as is committed in some court of justice, or before some magistrate or officer properly authorized to administer an oath, in some civil or criminal proceedings. The perjury must also be corrupt, wilful, and positive, not committed on surprize or the like; it must also be in some point material to the matter in question; no regard being paid either to voluntary oaths, or perjury, in any trifling, collateral circumstance. Subornation of perjury is, procuring another to take such a false oath, as would be considered

perjury

perjury in the taker. The punishment for perjury, or subornation of perjury, at common law, is fine and imprisonment. But there is a statute that inflicts perpetual infamy, and a penalty of forty pounds on the suborner; and, in default of payment, imprisonment for six months, and to stand with both ears nailed to the pillory. Perjury, by the same statute, is punishable with six months imprisonment, perpetual infamy, and a fine of twenty pounds, or to have both ears nailed to the pillory. But, as a statute of Geo. II. gives the court a power either to send the offender to the house of correction, for a term not exceeding seven years, or transport him for the same period, and makes it felony, without benefit of clergy, to escape, or return before the expiration of the time. Prosecutions for this offence are usually carried on at common law. Indeed, if a defendant perjureth himself in Chancery, the Exchequer-chamber, or the like, he is not punishable by indictment at the common law. But, to convict a man of perjury, a probable evidence is not enough, but it must be a strong, clear evidence, and the witnesses must be more numerous than those on the side of the defendant, for otherwise it is only oath against oath; and the party prejudiced by the perjury shall not be admitted to prove the perjury. Quakers making solemn affirmation wilfully and corruptly, shall suffer as in cases of perjury.

Bribery is another species of offence against public justice; that is, when a judge or other person concerned in the administration of justice, takes an undue reward to influence his conduct in his office. In inferior offices this offence is punished with fine and imprisonment, and in the offer of a bribe, whether taken or not, the same. But all judges and officers of the King, convicted of bribery, shall forfeit treble the bribe, be punished at the King's will, even to death, and be discharged from the King's service for ever.

Attempting to influence a jury corruptly to any one side, by any means whatever, is called *embracery*, and is punishable by fine and imprisonment; and in the jurors so influenced by perpetual infamy, imprisonment for a year, and forfeiture of ten-fold value.

False verdicts of jurors, whether occasioned by embracery or not, was formerly punished by attainant.

Negligence of duty in sheriffs, coroners, constables, and other public officers, entrusted with the administration of justice, is punishable by fine, and, in very notorious cases, with the loss of their office, provided it be a lucrative one. Omitting to apprehend

prehend persons offering stolen lead, iron, and other metals to sale, is punishable by imprisonment and a fine.

All *oppressions* and tyrannical partiality of judges and other magistrates, in the administration, or under colour, of their office, if prosecuted either by impeachment in parliament, or by information in the court of King's Bench, according to the rank of the offenders, is even severely punished by fines, imprisonment, forfeiture of office, or other discretionary censure.

Eatoriſon is the last offence I shall mention under the abuses of public justice. This is an officer's unlawfully demanding, by virtue of his office, any money or valuable consideration, that he has no right to demand, or before it be due; and is punishable by fine and imprisonment, and sometimes with a forfeiture of the office.

2. The next class of offences among those that infringe the rights of the public, are such as are levelled at the public peace, and called Breaches of the peace. These are riotous assembling, unlawful hunting, sending threatening letters, destroying flood-gates, affrays, unlawful assemblies, tumultuous petitioning, forcible entry or detainer, going armed, spreading false tales or prophecies, challenging to fight, and libels.

The *riotous assembling* of twelve persons and more, and not dispersing, upon proclamation, is of this kind. If any twelve persons are unlawfully assembled, to the disturbance of the peace, and any one justice of the peace, sheriff, under-sheriff, or mayor of a town, shall think proper to command them, by proclamation, to disperse; if they contemn his orders, and continue together for one hour afterwards, such contempt shall be felony without benefit of clergy. And, if the reading of the proclamation be by force opposed, or the reader be in any manner wilfully hindered from the reading of it, such opposers and hinderers are felons, without benefit of clergy; and all persons to whom such proclamation ought to have been made, and knowing of such hindrance, and not dispersing, are felons, without benefit of clergy. And all persons are indemnified who shall chance to kill any of the mob in endeavouring to disperse them. And if any persons so riotously assembled, begin, even before proclamation, to pull down any church, chapel, meeting-house, dwelling-house, or out-houses, they shall be felons without benefit of clergy.

To appear armed in any enclosed forest or place where deer are usually kept, or in any warren for hares or conies, or in any high road, open heath, common, or down, by day or night, with faces blacked, or otherwise disguised, or (being so disguised)

guised) to hunt, wound, kill, or steal any deer, to rob a warren, or to steal fish, or to procure, by gift or promise of reward, any person to join them in such unlawful act, is felony without benefit of clergy.

Knowingly to send any letter without a name, or with a fictitious name, demanding money, venison, or any other valuable thing, or threatening, without any demand, to kill any of the King's subjects, or to fire their houses, out-houses, barns, or ricks, is also felony without benefit of clergy.

To pull down or destroy any lock, sluice, or flood-gate erected, by act of parliament, on a navigable river, or to rescue any person in custody for the same, is felony without benefit of clergy. And maliciously damaging or destroying any banks, sluices, or other works on such navigable river, opening the flood-gates, or otherwise obstructing the navigation, is felony, punishable with transportation for seven years. Maliciously pulling down or otherwise destroying any turnpike-gate or fence, toll-house, or weighing engine thereunto belonging, erected by authority of parliament, or to rescue any person in custody for the same, is felony, without benefit of clergy.

Affrays, as the public fighting of two or more persons, is punishable by fine and imprisonment, according to the circumstances of the case. Duelling, disturbing the officers of justice in the execution of their office, fighting in the King's courts, in churches or church-yards, are great aggravations of the offence. Any private person present is justifiable in parting the combatants, let the consequence be what it may. A constable, or other similar officer, is bound to keep the peace; and may break open doors to suppress an affray, or apprehend the persons fighting, and may either carry them before a magistrate, or imprison them by his own authority, till the heat is over, and may perhaps then make them find sureties for the peace: but he must not lay hands on those who contend only with hot words. If any person shall, by words only, quarrel in a church or church-yard, the ordinary shall suspend him, if a layman from going to church, if a clerk in orders, from the ministration of his office during pleasure: and, if any person in such church-yards proceeds to smite or lay violent hands upon another, he shall be excommunicated; or if he strikes him with a weapon, or draws any weapon with intent to strike, he shall, besides excommunication, (being convicted by a jury) have one of his ears cut off; or, having no ears, be branded with the letter F in his cheek. Two persons may constitute an affray: but,

Three persons or more will constitute a riot, rout, or unlawful assembly. An unlawful assembly, is the meeting of three or more, to do an unlawful act, though they part again without any attempt towards it, and is punishable at Common Law, if the numbers assembled are more than three and less than twelve, by fine and imprisonment. A meeting of twelve persons may make the offence, as we have just seen, capital, according to the circumstances. A rout is, where three or more assemble to do an unlawful act upon a common quarrel, such as breaking down fences, upon a right of way or common claimed ; and making some advances towards it. A riot, is where three or more actually do an unlawful act of violence, even with or without a common cause of quarrel ; as to beat a man, kill game in another's liberty, &c. or even to do a lawful act in a riotous manner, such as removing a nuisance : the punishment for a riot or rout, is fine and imprisonment at Common Law, to which, in very atrocious cases, the pillory is sometimes added. If a jury acquit all but two in a riot, those two cannot be guilty, there must be three to constitute guilt. Any two justices, together with the sheriff or under-sheriff of the county, may come with the *posse comitatus*, if need be, and suppress any such riot, assembly or rout, arrest the rioters, and record upon the spot the nature and circumstances of the whole transaction ; which record alone shall be a sufficient conviction of the offenders. On this statute it is held, that all persons, noblemen, and others, except women, clergymen, persons decrepid, and minors under fifteen, are bound to attend the justices in suppressing a riot, on pain of fine and imprisonment : and that any battery, wounding, or killing the rioters, that may happen in so doing, is justifiable.

Not more than twenty names shall be signed to any petition to the King, or either house of parliament, for any alteration of matters established by law, in church or state ; unless the contents thereof be previously approved, in the county, by three justices, or the majority of the grand-jury at the assizes or quarter-sessions ; and in London, by the lord-mayor, aldermen, and common council ; and, no petition shall be delivered by a company of more than ten persons, on pain, in either case, of incurring a penalty, not exceeding one hundred pounds, and three months imprisonment. So near is *tumultuous petitioning* a-kin to rioting.

Violently taking or holding possession of lands and tenements, with menaces, force and arms, without the authority of law, called *forcible entry or detainer*, is punishable. All forcible entries

tries are punished with imprisonment and ransom at the King's will, and, upon any forcible entry, or forcible detainer after peaceable entry, into any lands, or benefices of the church, one or more justices of the peace taking sufficient power of the county, may go to the place, and there record the force upon his own view, as in case of riots; and upon such conviction may commit the offender to goal, till he makes fine and ransom to the King. And further, the justice or justices have power to summon a jury, to try the forcible entry or detainer complained of; and if the same be found by that jury, then, besides the fine on the offender, the justices shall make restitution, by the sheriff, of the possession, without enquiring into the merits of the title; and the same may be done by indictment at the general sessions; but this does not extend to such as endeavour to maintain possession by force, where they, themselves, or their ancestors have been in the peaceable enjoyment of the lands and tenements for three years immediately preceding. Holding over by force, where the tenant's title was under a lease, now expired, is held to be forcible detainer. If a forcible entry or detainer shall be made by three persons or more, it is a riot, and punishable as such.

Under the head of forcible detainer, I may mention that of an inn-keeper detaining the goods or person of his guest, for the reckoning, or the horse of his guest, till he is paid for his food, and this he may do, without any agreement for that purpose; but such a horse may be detained only for his own meat, and not for the meat of the guest, or that of any other horse, nor can the inn-keeper use such horse, such detention being in the nature of a distress: by the custom, however, of London and Exeter, but in no other place, a horse left at an inn, and eating out his own price, the inn-keeper may take him as his own, on the reasonable appraisement of four of his neighbours; but by the custom of the realm, he hath no power to sell the horse. If any inn-keeper, alehouse-keeper, victualler, or sutler, in giving any account or reckoning, in writing or otherwise, shall refuse or deny to give in the particular number of quarts, or pints, or shall sell in measures unmarked: it shall not be lawful for him, for default of payment of such reckoning, to detain any goods or other thing belonging to the person or persons from whom such reckoning shall be due, but he shall be left to his action at law, for the same.

Riding or going armed with dangerous or unusual weapons, is deemed also an infringement of the peace, and is punishable by imprisonment, during the King's pleasure, and a forfeiture of the

arms. But it is held, that no person is within the meaning, who arms himself to suppress riots, rebels, or enemies ; nor is any wearing of customary arms for ornament, or defence, in such places, and on such occasions, as the fashion authorizes, within the words of the statute ; nor any man's assembling his neighbours and friends in his own house, against those who threaten to him any violence, his house being his castle.

Spreading false and injurious news and *tales* that create jealousies and enmity between the King and his nobles, or concerning any great man of the realm, is punishable at Common Law with fine and imprisonment. So is it by several statutes. *False* and *pretended prophecies* alarming the people, are equally unlawful and punishable, with a fine of one hundred pounds, and one year's imprisonment, for the first offence, and a forfeiture of all goods and chattels and imprisonment during life, for the second.

Even exciting others to a breach of the peace is an offence of the same kind. *Challenges to fight*, either by word or letter, or to be the bearer of such challenge, are punishable with fine and imprisonment, according to the circumstances. If a challenge arises on account of any money won at gaming, or if any assault or affray happen on such account, the offender shall forfeit all his goods to the crown, and suffer two years imprisonment.

Libels, in their most extensive meaning, imply any writings, pictures, or emblems of an immoral or illegal tendency ; but in the sense we are to consider them here, they are malicious defamations made public by either printing, writing, signs, or pictures, and are deemed a breach of the peace, as they tend to disturb the public repose. In the eye of the law, the communication of a libel, though it be to one person only, is a publication of it ; of course fending an abusive, private letter to a man is as much a libel, as if it were openly printed. It is immaterial also whether the subject matter of the libel be true or false, it being the provocation that is punishable, and not merely the falsity, though the falsity is an aggravation of the crime. In a civil action, we say that a libel must appear false as well as defamatory, or the party libelled could prove no injury, of course, can obtain no compensation ; but in such libels as are construed a breach of the peace, if they tend to provoke wrath, they are criminal. The punishment of such a libel, if either the making, repeating, printing, or publishing be proved, is a fine, and such corporal punishment as the court thinks proper to inflict.

3. Offences against public trade are next in order ; these are owing, smuggling, bankruptcy, usury, cheating, forestalling, regrating

regrating, engrossing, monopolies, carrying on trades unlawfully, and transporting and seducing artists.

Owling, so called from being committed in the night, is the exportation of wool or sheep from this kingdom, to the injury of the woollen manufacture. Transportation of live sheep, or embarking them on board any ship, is forfeiture of goods, and one year's imprisonment, for the first offence, with the loss of the left-hand at the end of the year, which shall be cut off in some public market, and there nailed upon the openest place, for the second offence, it is felony. Exportation of wool, sheep, or fullers-earth is subject to pecuniary penalties, and the forfeiture of the interest of the ship and cargo by the owners, if privy; and confiscation of goods, and three years imprisonment to the master and all the seamen: and transportation for seven years, if the penalties be not paid.

Smuggling, or the clandestine importation of goods without paying the duty, is punished by a variety of statutes, inflicting pecuniary penalties and seizure of the goods so imported, and adding the guilt of felony with transportation for seven years upon practices more open, avowed, and atrocious. If three or more persons shall assemble, with fire arms or other offensive weapons, to assist in the illegal exportation or importation of goods, or in rescuing the same after seizure, or in rescuing offenders in custody for such offences, or shall pass with such goods in disguise; or shall wound, shoot at, or assault any officers of the revenue, when in the execution of their duty, such persons shall be felons without benefit of clergy. There are several laws also in force, inflicting pecuniary penalties on the buyers or sellers of smuggled or prohibited goods.

Bankruptcy we have spoken of already: but we may subjoin under this head, that if a prisoner, charged in execution for any debt under a hundred pounds, neglects or refuses, on demand, to discover and deliver up his effects for the benefit of his creditors, he is guilty of felony, and is punishable with transportation for seven years.

Usury is the taking unlawful interest for the loan of money, of this also we have already treated, where we observed, that the legal interest is five *per cent.* in England, and six *per cent.* in Ireland, and all contracts for taking more are void, and the lender shall forfeit treble the sum borrowed: also if any scrivener or broker takes more than five shillings *per cent.* for procuring money, or more than one shilling for making a bond, he shall forfeit twenty pounds, with costs, and shall suffer imprisonment for half a year. To take more than ten shillings *per cent.*

cent. for procuring any money to be advanced on any life-annuity, is an indictable misdemeanour, and punished with fine and imprisonment; so also is the procuring or soliciting any minor to grant any life-annuity, or to promise or otherwise engage to rectify it, when he comes of age.

Cheating, if indicted, as it may be, at Common Law, is punishable by fine and imprisonment, though the readier and more usual method is by levying, on a summary conviction, by distress and sale, the forfeitures inflicted by many acts of parliament passed to punish frauds in trades and traders. Under this head may be reckoned breaking the assize of bread, or the rules respecting its price and quantity laid down by law, and the offence of selling with false weights and measures. Any deceitful practice by cozening another by artful means, whether in matters of trade or otherwise, as by playing with false dice, or the like, is punishable with fine, imprisonment, and pillory. And if any man defrauds another of any valuable chattels, by colour of any false, privy token, counterfeit letters, or false pretence, or pawns or disposes of another's goods without the consent of the owner, he shall suffer such punishment by imprisonment, fine, pillory, transportation, whipping, or other corporal pains, as the court shall direct. In such impositions and deceits, where common prudence may guard persons against their suffering from them, as selling sixteen gallons of beer for eighteen; selling an unsound horse for a sound one, and the like, the party aggrieved is left to his civil remedy for redress, such offences not being indictable.

Forestalling the market, that is, buying or contracting for any merchandize or provisions coming in the way to market; disengaging persons from bringing their goods or provisions there; or persuading them to enhance the price when there, thus making the market dearer, is an offence at Common Law, and punishable with discretionary fine and imprisonment. So is

Regrating, that is, enhancing the price of provisions, by buying of corn or other dead provisions in any market, and selling it again in the same market, or within four miles of the place.

Engroffing also is a crime at Common Law of equal die, and equal punishment: this is buying up large quantities of corn or other dead provisions, designing to sell them again. So also is engroffing any other commodity, with an intent to sell it at an unreasonable price.

Monopoly, in other branches of trade, is a similar offence to engroffing in provisions. Monopolies are declared contrary to law,

law, and void (except as to patents, not exceeding the grant of fourteen years, to the authors of new inventions, and except also patents concerning printing, saltpetre, gun-powder, great ordnance, and shot) the punishment of which is forfeiture of treble damages and double costs to those whom they attempt to disturb; and if monopolists procure any action, brought against them for these damages, to be stayed by an extrajudicial order, other than that of the court wherein it is brought, they incur the penalties of a *præemunire*. Combinations of victuallers or artificers, to raise the price of provisions, or any commodities, or the rate of labour, are, by several statutes, particularly and severely punished, and generally, with the forfeiture of ten pounds, or twenty days imprisonment, with an allowance only of bread and water for the first offence; twenty pounds, or the pillory for the second; and forty pounds or the pillory, loss of one ear, and perpetual infamy, for the third.

Exercising a trade in any town, without having served an apprenticeship for seven years, is punishable with the penalty of forty shillings by the month.

To prevent the *seduction* or *transportation* of artists, which is considered as destructive of our home-manufactures, it is enacted, that such, as so entice or seduce them, shall be fined one hundred pounds, and be imprisoned three months; and for the second offence shall be fined at discretion, and imprisoned a year: and the artificers so going into foreign countries, and not returning, within six months after warning given them by the British ambassador where they reside, shall be deemed aliens, and forfeit all their lands and goods, and shall be incapable of any legacy or gift. By another act, the seducer incurs a penalty of £ 500. for each artificer contracted with to be sent abroad, and twelve months imprisonment for the first offence: and one thousand pounds and two years imprisonment for the second. And if any person exports any tools or utensils used in the silk, linen, cotton, or woollen manufactures, (excepting wool cards to North America), he forfeits the same, and two hundred pounds; and the captain of the ship (having knowledge thereof) one hundred pounds: and if any captain of a King's ship, or officer of the customs, knowingly suffers such exportation, he forfeits one hundred pounds, and his employment, and is for ever made incapable of bearing any public office; and every person collecting such tools or utensils, in order to export the same, shall, on conviction at the assizes, forfeit such tools, and also two hundred pounds.

4. The fourth class of offences under this head are those against the public health, of which there are only two; Breaking of quarantine, and Selling unwholesome provisions.

The first is felony without clergy. If any person infected with the plague, or dwelling in an infected house, be commanded by the mayor or constable, or other head-officer of his town or vill, to keep his house, and shall venture to disobey it, he may be enforced by the watchmen appointed on such melancholy occasions, to obey such necessary command: and if any hurt ensue by such enforcement, the watchmen are thereby indemnified. And farther, if such person, so commanded to confine himself, goes abroad, and converses in company, if he has no plague-sore upon him, he shall be punished as a vagabond by whipping, and be bound to his good behaviour; but if he has any infectious sore upon him uncured, he shall then be guilty of felony. There are statutes that regulate the mode of performing *quarantine*, making the masters of ships coming from infected places, and disobeying the directions there given, or having the plague on board and concealing it, guilty of felony without benefit of clergy. The same punishment is inflicted also on persons escaping from the lazarets or places wherein quarantine is to be performed; and on officers and watchmen neglecting their duty; and on persons conveying goods and letters from ships performing quarantine.

The sale of *corrupted wine*, contagious or *unwholesome flesh*, or fish bought of a Jew, is prohibited on pain of amercement for the first offence; pillory for the second; fine and imprisonment for the third; and abjuration of the town for the fourth. And any brewing or adulteration of wine is punishable with the penalty of one hundred pounds, if done by the wholesale merchant, and forty pounds if done by the vintner or retail trader.

5. The last class of offences under such as affect the public, are those against the *police* or *economy*, that is, the due reputation and domestic order of the kingdom. These are clandestine marriages, bigamy, soldiers or sailors wandering, gypsies wandering, common nuisances, idleness, luxury, gaming, and killing game.

With respect to *clandestine marriages*, to solemnize marriage in any place besides a church or public chapel, except by licence from the archbishop of Canterbury, or in such church or chapel, without due publication of the banns, or proper licence, renders the marriage void, subjects the minister solemnizing it to felony, punishable by transportation for fourteen years; and he and his assistants to a penalty of one hundred pounds. To make

make a false entry in a marriage register ; to alter it when made ; to forge or counterfeit such entry, or a marriage licence, to cause or procure, or act or assist in such forgery ; to utter the same as true, knowing it to be counterfeited ; or to destroy or procure the destruction of any register, in order to vacate any marriage, or subject any person to the penalties enjoined, makes the party guilty of felony, without benefit of clergy.

Bigamy or *Polygamy*, that is, having more wives or husbands than one, at one time, is felony. By the Ecclesiastical Law, a second marriage, the former husband or wife being living, is void. If any person being married, do afterwards marry again, the former husband or wife being alive, it is felony, but within benefit of clergy. In this case the second wife may be admitted as a witness against the husband, she being in fact no wife ; and *vice versa*, so may the husband. This act, however, has the five following exceptions, in which such second marriage, (though in the first three it is void) is not felony. 1. Where either party hath been continually *abroad* for seven years, whether the party in England hath notice of the other's being living or no. 2. Where either of the parties hath been absent from the other, seven years *within* this kingdom, and the other party hath had no knowledge of the other's being alive within that time. 3. Where there is a divorce (or separation *a mensa et thoro*) by sentence in the ecclesiastical court. 4. Where the first marriage is declared void by any such sentence, and the parties loosed *a vinculo*. Or, 5. Where either of the parties was under the age of consent at the time of his marriage ; as in this case the second marriage declares a non-assent of one of the parties, of course, renders the first marriage void : unless, at the age of consent, the parties had agreed to the marriage ; this would have completed the contract, and consequently such second marriage would fall within the act.

Soldiers and *mariners* idly wandering about the country, or persons pretending to be soldiers or mariners, not having a pass from a justice of the peace, limiting the time of their passage ; or exceeding the time limited, unless they fall sick on the road ; or forging such pass, are guilty of felony, without benefit of clergy. But if any honest freeholder, or other person of substance, will take such soldier or mariner into his service, and he abides in the same for one year ; unless licensed to depart by his employer (who in such case shall forfeit ten pounds), he shall be exempted from the penalty of this act.

If any persons falling under the denomination of *gypsies*, that is, persons following no profession, but going about from place to

to place in great companies, and using crafty means to deceive the people, telling men's and women's fortunes; deceiving the people of their money, and committing many heinous felonies and robberies; if any such persons shall be imported into this kingdom, the importer shall forfeit forty pounds. And if the gypsies themselves remain one month in this kingdom; or if any person being fourteen years old (whether a natural born subject or stranger) which hath been seen or found in the fellowship of such gypsies, or which hath disguised him or herself like them, shall remain in the same one whole month, or at several times, he shall be adjudged guilty of felony, without benefit of clergy.

Common nuisances are a public offence, being either the doing of a thing to the annoyance of the people in general, or the neglecting to do a thing which the common good requires; such are obstructing or omitting to repair highways, bridges, and public rivers; for which the persons, so obstructing, or omitting to repair when they ought, are indictable. What private nuisances are, have been shewn. All such nuisances, as, when injurious to private persons are actionable, *viz.* offensive trades and manufactures, are, when detrimental to the public, punishable by public prosecution, and subject to suppression and fine, according to the misdemeanour. The trade of a *tallow-chandler*, *brewer*, &c. in a town, is deemed a nuisance; so is a *glass-house*, or a manufactory for making *noisome* and *offensive* liquors, as spirit of sulphur, oil of vitriol, and the like. Keeping of *hogs* in any city or market town is a public nuisance; so are all disorderly *inns* or *ale-houses*, *baudy-houses*, *gaming-houses*, unlicensed *stage-plays*, booths and stages for *rope-dancers*, *mountebanks*, and the like. Inns indeed, being intended for the lodging and reception of travellers, may be indicted, suppressed, and fined, if they refuse to entertain a traveller, without very sufficient cause. All *lotteries* are declared to be public nuisances, and all grants, patents, or licences for the same, to be contrary to law. Making and selling of *fire-works* and *squibs*, or throwing them about in the street, is, on account of their danger, deemed a common nuisance, and, of course, punishable by fine. Making, keeping, or the carriage of, too large a quantity of *gun-powder*, at one time, or in one place or vehicle; is, tho' not declared a common nuisance, prohibited under heavy penalties. *Eaves droppers*, or such as listen under walls, windows, or eaves of houzes, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance, indictable at the sessions and punishable by fine and finding sureties for their good behaviour. *Common scolds* are also a public nuisance

nuisance to the neighbourhood ; and if any woman be convicted, she shall be sentenced to the ducking-stool, that is, to be plunged in water for her punishment. Disturbing a neighbourhood with a speaking-trumpet in the night, has been deemed a nuisance. So is a mastiff, left to go in the streets unmuzzled, a nuisance. And a monster of the human kind, shewn for money, dead or alive, has been held a misdemeanour. A master is indictable for a nuisance done by his servant. And the court never admits a person convicted of a nuisance to a small fine, until proof is made of the nuisance being removed.

Idleness also is a high offence against public economy. Idle and disorderly persons are punishable with one month's imprisonment in the house of correction ; rogues and vagabonds, with whipping and imprisonment not exceeding six months : and incorrigible rogues with whipping and imprisonment not exceeding two years. Breach and escape from confinement in one of an inferior class, ranks him among incorrigible rogues, and in a rogue (before incorrigible) makes him guilty of felony, and subject to transportation for seven years : and persons harbouring vagrants are subject to a penalty of forty shillings, and all expences brought upon the parish thereby. Idle and disorderly persons are as follow, *viz.* persons threatening to run away and leave their wives and children to the parish ; persons returning unlawfully, without a certificate, to a place from which they have been legally removed by two justices ; persons who live idle, refusing to work for customary wages, and have not wherewithal to maintain themselves with, and beggars. By statute, rogues and vagabonds are as follow, *viz.* persons gathering alms under pretences of loss by fire, or other casualty ; persons collecting from prisons, goals, or hospitals ; fencers ; bearwards ; strolling players, or fiddlers ; juglers ; gypsies ; fortune-tellers ; gamblers ; persons running away from their wives and children, leaving them to the parish ; pedlars not licensed ; persons wandering about, lodging in barns, &c. not giving a good account of themselves ; wandering soldiers and seamen, without certificates, and all other wanderers and beggars. Incorrigible rogues are such as collect ends of yarn or the refuse pieces of woollen goods, which the law punishes, to prevent abuses in the woollen manufacture ; persons apprehended as rogues and vagabonds, and flying in the face of justice, or such persons escaping from prison before the expiration of their confinement, and all rogues and vagabonds convicted of a second offence. Ten shillings reward is allowed to private persons for apprehending any rogue or vagabond ; and a penalty of ten

ten shillings is inflicted on such as neglect to apprehend them, when ordered by a magistrate.

Luxury, or extravagant expences in dress, diet, &c. may be classed also under the head of public œconomy. Formerly there were many laws to restrain excess in apparel as a public evil ; but one respecting diet exists at present unrepealed, which enacts, that no man shall be served at dinner or supper with more than two courses ; except upon some great holiday there specified, in which he may be served with three. And, under this head, I'll take the opportunity to mention, that for the encouragement of fisheries and the increase of cattle, no person shall eat any meat without a licence, on Fridays, Saturdays, the embering days, or in Lent, nor on any other fish day, on pain of forfeiting twenty shillings, or being imprisoned one month.

Gaming is universally allowed to be a public evil. To restrain this, among the lower class of people, all but gentlemen are prohibited the games of tennis, tables, cards, dice, bowls, coits, &c. unless in the time of Christmas, under certain pecuniary pains and imprisonment ; and pecuniary penalties may be inflicted as well upon the master of any public house, wherein servants are permitted to game, as upon the servants themselves who are found to be gaming there. In more exalted life, if any person, by playing or betting, shall lose more than a hundred pounds at one time, he shall not be compellable to pay the same ; and the winner shall forfeit treble the value, one moiety to the King, and the other to the informer. All bonds and other securities, given for money won at play, or money lent at the time to play withal, shall be utterly void : all mortgages and incumbrances of lands made upon the same consideration, shall be and ensue, to the use of the heir of the mortgagor : if any person, at one time, loses ten pounds at play, he may sue the winner, and recover it back by action of debt at law ; and in case the loser does not, any other person may sue the winner for treble the sum so lost ; and the plaintiff, in either case, may examine the defendant himself upon oath ; (money lost at a horse or foot-race falls within this act) ; and in any of these suits no privilege of parliament shall be allowed. Also, if any person cheats at play, and, at one time, wins more than ten pounds, or any valuable thing, he may be indicted thereon, and shall forfeit five times the value, shall be deemed infamous, and suffer such corporal punishment as in case of wilful purgery. By several statutes, all private lotteries by tickets, cards, or dice (and particularly the games of faro, basset, ace of hearts, hazard, pas-

fage

fage, roly-polly, and all other games with dice, except back-gammon) are prohibited on pain of forfeiting two hundred pounds by him that shall erect such lotteries, and fifty pounds a time by the players. Public lotteries are also prohibited under heavy, pecuniary penalties, unless by authority of parliament, and all kinds of ingenious devices under the name of sales or otherwise, which, in the end, are equivalent to lotteries. To prevent the multiplicity of horse-races, it is enacted, That no plates or matches, under fifty pounds value, shall be run, on pain of two hundred pounds penalty, to be paid by the owner of each horse running, and one hundred pounds by such as advertise the plate. If any man be convicted upon the information or indictment of winning or losing at any sitting ten pounds, or twenty pounds within twenty-four hours, he shall forfeit five times the sum. Two justices may examine any person reported to live by gaming, and if he does not make it appear to the contrary, may bind him to good behaviour for twelve months; and, in default of his giving sufficient security, may commit him to the common goal till he does: and if he loses at any sitting twenty shillings, during the time he is bound, such playing shall be deemed a forfeiture of the recognizance.

With respect to killing of *game*, we have had occasion to mention it before, where I shewed that no qualification will entitle a man to the liberty of sporting, unless he has a grant of free-warren. Certain qualifications will indeed exempt him from the penalties of the game-laws, but he will nevertheless be a trespasser, and be liable to be sued for such trespass in a court of law. The qualifications alluded to, are by the Statute Law, as follow. 1. Having a freehold estate of one hundred pounds *per annum*; 2. A leasehold, for ninety-nine years, of one hundred and fifty pounds a year; 3. Being the son and heir apparent of an esquire, or person of superior degree; 4. Being the owner or keeper of a forest, park, chace, or warren; and, 5. Having a licence for shooting. Unqualified persons transgressing these laws by killing game, keeping engines for that purpose, or even having game in their custody; or persons, however qualified, that kill game, or have it in possession, at improper seasons of the year, or unseasonable hours of the day or night, on Sundays or on Christmas day, are subject to various, pecuniary penalties and corporal punishment by different statutes, on any of which, but only on one at a time, justices of the peace may convict in a summary way, or, in most of them, prosecutions may be carried on at the assizes. And no person, however

for example, when it happens from throwing stones in a town, or the merciless diversion of cock-throwing. Homicide by accident presumes negligence and want of sufficient caution, of course, cannot be altogether faultless.

Homicide in *self-defence* is also rather excusable than justifiable. The right of natural defence does not imply a right of attacking, the laws being the proper resource for redress; no man therefore can justify the killing another in his own defence, unless certain and immediate suffering would be the consequence of waiting the assistance of the law. As homicide in self-defence generally arises from casual quarrels, and since in quarrels, both parties may be, and usually are, in some fault; if two persons fight, and one kills the other, the law will not deem the survivor entirely guiltless. Where both parties are actually fighting, at the time the mortal stroke is given, the killer is guilty of manslaughter, because the act of fighting is illegal; but if the killer hath not begun to fight, or having begun, endeavours to decline, and afterwards, being close pressed by his antagonist, kills him in order to save himself, this is homicide excusable by self-defence. For a man, who kills another in a sudden quarrel, to stand acquitted, it must appear that he retreated as far as he safely or conveniently could, to avoid the violence of the attack, before he turned upon his assailant, and that not to watch his opportunity, but from a real unwillingness to shed blood: to turn thus from an enemy in the midst of an engagement would be cowardice; but the law countenances no such point of honour, at any other time. Neither will the law permit a man, under the colour of self-defence, to screen himself from the guilt of murder. For, if two persons, A and B, agree to fight a duel, and A makes the first attack; though B retreats as far as he safely can, and then kills A, it is murder, because of the preconcerted design. But should A, upon a sudden quarrel, assault B first, and on B's returning the assault, absolutely fly from B, but being driven to the wall, turn again and kill B, some are of opinion, it would be excusable homicide, though others have thought differently, as the extremity, to which A was reduced, arose from his own fault. Masters and servants, parents and children, husbands and wives, being allowed to stand upon the reciprocal defence of each other, either killing an assailant, in the necessary defence of the other respectively, will be homicide excusable or *se defendendo*.

Where, in the case of two persons shipwrecked, and getting on the same plank incapable of saving them both, one shall thrust

thrust the other off, whereby he is drowned, the great law of self-preservation will justify the act. But,

3. Felonious homicide is of a very different nature, and this whether it be the murder of one's self or another.

Suicide or self-murder is a crime too frequently committed with cool deliberation. Nay, if a lunatic kills himself in a lucid interval, he is as much guilty of self-murder as another man. Self-murder, like other felonies, admits of accessories before the fact; for if one man persuades another to kill himself, and he does it, the persuader is guilty of murder. If a man attempting to kill another, runs upon the sword of his antagonist; or shooting at another, the gun bursts and kills himself; from the unlawfulness of the act, he is a *felo de se*. But the party must be of years of discretion and in his senses, or else it is no crime.

The punishment inflicted on a self-murderer, can be only on his reputation and property. The law ordains that he be ignominiously buried in the highway, with a stake driven through his body, and that his goods and chattels be forfeited to the King. And this forfeiture takes place at the time of the act done in the felon's life-time. By the rubrick of the Common-prayer before the burial service (confirmed by statute), persons who have laid violent hands upon themselves shall not have that office used at their interment.

In killing another person, there are two degrees of guilt, dividing the offence into *manslaughter* and *murder*. Manslaughter (when voluntary), arises from the sudden heat of the passions, murder from the wickedness of the heart.

Manslaughter is defined to be the unlawful killing of another, without any kind of malice, and may be either voluntary, upon a sudden quarrel; or involuntary, in the commission of some unlawful act.

First, for the voluntary branch, if two persons fight upon a sudden quarrel, and one kills the other, it is manslaughter; and it is equally so, if, on such a quarrel, they each fetch their swords, and go immediately out into a field and fight, this being construed a continued heat of the same passion. So, if a man be greatly exasperated, as by pulling his nose, or some other great indignity, and instantly kills the aggressor, it would be manslaughter: for, there being no necessity to kill the assailant in self-preservation, it could not be deemed *se defensando*. But in all homicides, on provocation, if there be time for the passion to cool, and reason to interpose, such as agreeing to go out the next day, and the person so provoked should kill the aggressor

aggressor afterwards, it would be held a deliberate revenge and murder. If a man finds another in the act of adultery with his wife, and kills him instantly, it is manslaughter, but it is so low a degree of the crime, that in a case of this kind, the court ordered the burning to be lightly inflicted, as there could not be a greater provocation.

Involuntary manslaughter arises from the commission of an unlawful act, or a lawful act done in an unlawful manner. If a man in boxing or cudgelling with another, kills his antagonist, it is manslaughter, because the act of boxing or cudgelling is unlawful. If a workman flings a stone or piece of timber from a house-top into the street, and kills a man below, it may be accident, manslaughter, or murder, according to the circumstances. If he did it in a country village, where few passengers are passing, calling out to all people to have a care, it would be deemed an accident; but was such a thing to happen in London, or other populous town, where numbers are passing and repassing, it would be manslaughter, even though he gave loud warning; but again, should he know of their passing and give no warning at all, he would be adjudged guilty of murder, it being malice against all mankind. In short, where voluntary killing happens in consequence of an unlawful act, it will be either manslaughter or murder, according to the circumstances of the act done: if it is in the prosecution of a felonious intent, or in its consequence tended to bloodshed, it would be murder; but was no more intended than a trespass, it will be only manslaughter. However, to prevent accidents on the water, it is enacted, That if any waterman, between Gravesend and Windsor, receives into his boat a greater number of persons than the act allows, (seven) and any passenger shall then be drowned, such waterman is guilty, not of manslaughter only, but felony, and shall be transported.

Though the crime of manslaughter amounts to felony, it is within the benefit of clergy, and the punishment is burning in the hand, and forfeiture of goods and chattels. But there is one species of manslaughter from which the benefit of clergy is taken away: for, where one thrusts or stabs another, not then having a weapon drawn, or who hath not then first stricken the party stabbing, so that he dies thereof within six months after, the offender shall not have the benefit of clergy, though he did it not of malice aforethought. This statute was made on account of the frequent stabbing with short daggers, on quarrels between the Scotch and English, at the accession of James I. and should have expired with the mischief: but the humanity of the law

law so favourably construes this statute, when in behalf of the offender, and so strictly when against him, that stabbing now stands almost as it did at Common Law. For stabbing an adulteress is deemed manslaughter only ; and if the person killed had struck at all before the mortal stroke given, though in the preceding quarrel the stabber might have given the first blow, yet it is held not to fall within this statute. So it has been resolved, that killing by throwing a hammer, or other blunt weapon, is not within the statute, and it is doubted whether a shot with a pistol be so or not. But if the person killed had a cudgel in his hand, or had thrown a pot or a bottle, or discharged a pistol at the person stabbing, he is held to have a weapon drawn on his side, within the words of the statute.

We are now to consider the crime of deliberate *murder*.

Lunatics and infants are incapable of committing murder, unless in cases where they shew a consciousness of doing wrong : but drunkenness is no excuse ; nor lunacy, if the act be committed in a lucid interval.

To constitute murder, it must be also without excuse ; and the party must be actually dead ; for a bare assault without a design to kill, is only a great misdemeanour. There are various modes of killing ; but if a person be indicted for any one mode, suppose *poisoning*, he cannot be convicted, by evidence of a totally different mode, as for example, *shooting* or *starving* : but where they differ only in circumstances, as if the wound be alledged to be given with a sword, and it turns to have been with a knife, an axe, or a staff, the difference is immaterial. If a man does any act of which the probable consequence may be, and eventually is, death, such killing may be murder, though no stroke be struck by himself, or any murder intended ; where an unnatural son exposed his sick father to the air against his will, of which he died ; where a harlot laid her child under leaves in an orchard, and a kite struck it and killed it ; and where certain parish-officers shifted a child from parish to parish, till it died for want of care and sustenance. If a man who has a beast used to do mischief, and he, knowing it, suffers it to go abroad, and it kills a person, he is guilty of manslaughter ; but if he designingly turns it loose, though it is barely to make what is called sport, it is murder. If a regular physician or surgeon gives his patient a draught or plaster in order to cure him, and it unfortunately kills him, it is deemed only accident, however he may be liable to a civil action for his neglect or ignorance ; but if he be not regularly bred, he will be guilty of manslaughter, at the least. To make the killing murder, the party must die within

within a year and a day after the injury received, and in the computation, the whole day on which the hurt was given shall be reckoned the first.

To kill a child in its mother's womb is not murder, but great misprision ; but if the child be born alive, and dies of the potion or bruises it received in the womb, it is held to be murder, in such as administered the potion or gave the bruises. If any woman be delivered of a child, which, if born alive, would by law be a bastard, and endeavours privately to conceal its death, by burying the child or the like, the mother so offending shall suffer death as in the case of murder, unless she can prove by one witness at least, that the child was actually born dead : but from the severity of this statute, it has been customary, of late years, to require some kind of presumptive evidence, that the child was born alive, before the other constrained presumption (that the child whose death is concealed was therefore killed by its parent) is admitted to convict the mother. A woman confessing herself with child, before delivery, or calling or knocking for help in child-birth, will relieve her from this statute if nothing appears to prove that the child was born alive.

Lastly, to make killing murder, it must be committed with malice aforethought ; and it may be either expressed or implied. Expressed malice is from deliberation and design ; and this takes in the case of duelling, where both parties meet with a murderous intent. Also, if one, upon a sudden provocation, beats another in a cruel manner till he dies, though he did not intend to kill him, the law deems it done by express malice, or evil design, and adjudges it murder : as in the after cases ; when the following persons were thus killed ; by a park-keeper's tying a boy, that he found stealing wood, to a horse's tail, and dragging him along the park ; by a master beating a servant with an iron bar, in order to correct him ; and by a schoolmaster stamping upon his scholar's belly. The man also is guilty of murder, who goes deliberately among a crowd of people, with a horse used to strike, or who fires a gun coolly among them, provided death be the consequence ; this being universal malice. So a man, if he resolves to kill the next man he meets, and does it, though he does not know him : and if two or more meet to do an unlawful act, of which the probable consequence might be bloodshed ; as to beat a man, commit a riot, rob a park, and one of them kills a man ; it is murder in them all, because of the unlawfulness of the act, and the evil intended beforehand.

Implied malice, is where a particular enmity can be proved, as where one man wilfully poisons another. No affront, by words

words or gestures only, is sufficient provocation, so as to exonerate such acts of violence as endanger life; of course, if a man kills another suddenly, without a considerable provocation, the law implies malice. But if the person so provoked had unfortunately killed the other, by beating him so as only to shew he meant to chastise him, and not to kill him, the law adjudges it to be manslaughter only; but if the beating was severe and in cool blood, by way of revenge, it is murder. So if one kills an officer of justice in the execution of his duty, or any of his assistants, endeavouring to preserve the peace, or any private person striving to suppress an affray, or apprehend a felon, knowing his authority or the design with which he interferes, the law implies it to be malice, and the killer will be guilty of murder. Also where a prisoner dieth by the dregs of the gaoler, the law implies malice, by reason of the cruelty. And if one conspires to commit felony, and unintentionally kills a person, it is murder. Thus, if *A* shoots at *B*, and misses him, but kills *C*, it is murder, because of the previous felonious intent. It is the same, if *A* lays poison for *B*, and *C* takes it, and it kills him, though *A* had no malice against *C*. So also if one gives a woman with child a medicine to procure abortion, and it operates so violently as to destroy the woman, it is murder in the person who gave it. In a word, all homicide amounts to murder, unless justified by the command or the permission of the law; excused on the account of accident or self-defence, or alleviated into manslaughter by the circumstances we have mentioned, which circumstances of justification, excuse, or alleviation, it is incumbent on the prisoner to make out to the satisfaction of the court and jury.

The punishment for murder is, That the judge who tries the prisoner, shall pronounce sentence immediately after conviction, unless he sees cause to postpone it: and shall, in passing sentence, direct him to be executed on the next day but one (unless the same shall be Sunday, and then on the Monday following) and that his body be delivered to the surgeons to be dissected and anatomized; and that the judge may direct his body to be afterwards hung in chains, but in no wise to be buried without dissection, and during the interval between sentence and execution, the prisoner shall be kept alone, and sustained with only bread and water. But the judge, on good and sufficient cause, is empowered to respite the execution and relax the other restraints of this act.

A servant killing his master (whether he lives with him, or has left him, in a grudge conceived against him during his service)

vice) a wife, her husband (though divorced *a mensa et thoro*) or a clergyman his diocesan, metropolitan, or bishop that ordained him, is guilty of petty-treason ; the punishment for which is, to be drawn and hanged. A person indicted for petit-treason, may be acquitted thereof, and yet found guilty of manslaughter or murder.

Other crimes against the persons of individuals, are nine, *viz.* Mayhem ; Stealing an heiress ; Rape ; Sodomy ; Assaults ; Batteries ; Wounding ; False Imprisonment ; and Kidnapping ; the first four are felonies, the rest merely misdemeanors.

1. *Mayhem*, or maiming, as a civil injury, was considered in the preceding book, but as a breach of the peace, and of course criminal, it remains to be treated of here. We before defined mayhem to be violently depriving a man of the use of such of his members, as render him less able to defend himself, and annoy his adversary ; such as castration ; disabling a man's hand or finger : or striking out his eye or fore-tooth : the punishment for which at Common Law is only fine and imprisonment; but castration is held to be felony. Cutting off his ear or nose, as they do not weaken a man, are not considered as mayhem at Common Law.

To cut out a man's tongue or put out his eyes, if done of malice prepense, is felony. If a man shall maliciously cut off the ear of any of the King's subjects, he shall not only forfeit treble damages to the party grieved, to be recovered by action of trespass at Common Law, but also ten pounds by way of fine to the King. But if any person shall, of malice aforethought, and by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or disable any limb or member of any person, with intent to maim or disfigure him, such person, his counsellors, aiders, and abettors, shall be guilty of felony without benefit of clergy. If a man attacks another with an intent to murder him, but only maims him ; the offence is death. So is it to shoot any person, wilfully and maliciously. If a man maims himself, for a better pretence to beg, or that he may not be impressed for a soldier, he may be indicted and fined.

2. *Stealing an heiress* is also a felonious offence ; for, if any person shall for lucre take any woman, having substance either in goods or lands, or being heir-apparent to her ancestors, contrary to her will, and she afterwards shall be married to such misdoer, or, by his consent, to another, or defiled ; such person, his procurers and abettors, and such as knowingly receive such

such woman, shall be deemed principal felons, and with their accessories before the fact, shall not have the benefit of clergy.

In the construction of this statute it hath been determined, that no taking away falls within the act, unless the woman is heir-apparent, or has substance either real or personal, and unless it be against her will ; and it must also appear that she was afterwards married or defiled ; and it is held, that though the marriage or defilement might be by her subsequent consent, yet if the first taking away was against her will, it is felony ; and also, if she be originally taken with her own consent, yet if she afterwards refuse to continue with the taker, and be forced against her will, she may, from that time, as properly be said to be taken against her will, as if she had never given her consent at all ; for, till she was forced, she was mistress of her own actions. The evidence of a woman thus taken away and married, is admitted against her husband, he not being her legal husband.

If any person, above the age of fourteen, unlawfully shall convey or take away any woman-child unmarried, within the age of fourteen years, from the possession and against the will of the father, mother, guardian, or governors, he shall be imprisoned two years, or fined at the discretion of the justices : and if he deflowers such woman-child, or, without the consent of parents, contracts matrimony with her, he shall be imprisoned five years, or fined at the discretion of the justices, and she shall forfeit all her lands to her next of kin, during the life of her said husband.

3. Ravishing any woman above twelve years of age, is felony without benefit of clergy ; as is also the wickedness of carnally abusing any woman-child under the age of ten years, let it be with her consent or without. But carnally knowing a woman-child between the ages of ten and twelve, either with her consent or without, subjects the offender to two years imprisonment, and a fine at the King's will. The offence of rape is no way mitigated, by shewing that the woman at last yielded to the violence, if such her consent was forced by fear of death or duress ; nor is it any excuse that she consented after the fact.

A male child, under the age of fourteen years, is not supposed capable to commit a rape, and, therefore, cannot be punished for it. And it is held to be felony, to force a common prostitute, as she may have forsaken that course of life.

In trials for rape, the evidence of the party ravished is admitted as competent, but the credibility of such evidence rests with the jury ; whose duty it is to enquire minutely into her character ; not to give much credit to a stale story ; to examine

whether she made any outcries : whether she discovered the offence soon after, and sought out the offender to punish him ; and whether the offender fled, &c. in order to corroborate her evidence. If the rape be on an infant under twelve years of age her evidence may still be admitted on oath, if she knows the nature of an oath, and even if she does not, she may be heard unsworn, though this alone is not sufficient to convict the offender ; nay, the law allows what the child told her mother or other relations, to be given in evidence, as the case admits frequently of no better proof.

4. In *sodomitical* practices, or the crime against nature, committed either with man or beast, it ought to be strictly and impartially proved. Both parties, if arrived at the age of discretion, are equally punishable, and are guilty of felony, without benefit of clergy.

5, 6, 7. The next offences are misdemeanors only. *Assaults, batteries, and wounding*, have been already considered as injuries, for which satisfaction may be obtained in a court of law ; but considered as a breach of the peace, they are indictable and punishable with fines and imprisonment, and if committed with any very evil design, with other ignominious, corporal penalties. For example, intentional assaults to commit rape or sodomy, are usually punished with heavy fines, imprisonment, and pillory.

There is, however, one species of battery more penal than the rest, which is, beating or assaulting a clergyman. If any person lays violent hands upon a clerk, he may be indicted in the King's courts : and may also be sued before the bishop, that excommunication or bodily penance may be imposed ; which, if the offender will redeem with money, to be given to the bishop or the party grieved, it may be sued for before the bishop. So that a person guilty of such brutal behaviour to a clergyman, is subject to three kinds of prosecution, for one and the same offence ; an indictment for a breach of the peace, for such assault and battery : a civil action for the damage sustained ; and a suit in the ecclesiastical court, where penance will be enjoined, and then again for such sum of money as shall be agreed on for taking off the penance.

8. For *false imprisonment*, the party injured may have redress by a suit at law ; but as a breach of a peace, the offender may be indicted at the suit of the King, and punished by fine and imprisonment. To carry any one by force out of the four northern counties, or imprison him within the same, in order to ransom him, or make spoil of his person or goods, is felony without

without benefit of clergy in the principals, and all accessories before the fact.

9. *Kidnapping*, or the forcible stealing away man, woman, or child, from their own country, and sending them into another, the Common Law punishes with fine, imprisonment, and pillory. And if any captain of a merchant-vessel shall (during his being abroad) force any person on shore, or wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and desirous to return, he shall suffer three months imprisonment. We come now

2dly, To treat of those offences that more immediately affect the habitations of individuals, and of these there are two, *Arson* and *Burglary*.

1. *Arson*, from *ardendo*, is the malicious and wilful burning the dwelling-house of another, or the outhouses that are parcel thereof, though not contiguous thereto, nor under the same roof, as barns and stables, and is, at Common Law, a felonious offence. Setting fire to one's own house, provided one's neighbour's house is thereby burnt, but not else, is also arson; but by Common Law, the wilful firing of one's own house in a town, is a high misdemeanour, and punishable by fine, imprisonment, pillory, and perpetual sureties for good behaviour. And if a landlord or reversioner sets fire to his own house, of which another is in possession by lease or grant, it is arson, for, during the lease, the house is the property of the tenant. Setting fire to a house, unless it absolutely burns, does not fall within the description of arson; nor even a burning, unless it be malicious. But any servant *negligently* setting fire to a house or outhouses, shall forfeit one hundred pounds, or be sent to the house of correction for eighteen months. The punishment for arson is death; and that of wilful burning, whether arson or not, is now made as extensive as the mischief.

2. *Burglary*, is breaking into a mansion-house at night, in order to commit felony; the punishment for which is death; not only in the principals, but also in their abettors and accessories before the fact.

But to constitute this crime, it is held that under the term of nocturnal house-breaking, if there be day-light or twilight enough left to discern a man's face, it is no burglary. It must also be a *mansion* or dwelling-house, provided it be a private house, that is broken into; no distant barn, warehouse, or the like, falls within the description; nor does breaking open of houses where no man resides; but if it be resided in sometimes, though no one be in it, it is sufficient to make it burglary; but

not if the owner has quitted it, without a design to return. It is also burglary to break into a barn, stable, or warehouse, if such building be part or parcel of the dwelling-house, and within the same common fence. A chamber in a college, or inn of court, is deemed a mansion house; so also is a room or lodging in any private house, if the owner doth not dwell in the house, or if he and the lodger enter by different outward doors; but not otherwise. The house of a corporation, inhabited in separate apartments by the officers of the body corporate, is the mansion-house of the corporation and of the respective officers. But breaking into a shop, the parcel of one's mansion-house, which another hires to work or trade in, without ever sleeping in it, is not burglary; for, by the lease, it is severed from the rest of the house, and, of course, is not the dwelling-house of him who occupies the other part. Neither is it burglary to break into a tent or booth at a fair, though the owner may dwell in it; the law regarding only substantial edifices, a house, a church, the wall or gate of a town; breaking into either of which at night, is a burglarious offence.

Then again as to the *manner* in which this crime is committed. What is a breaking into? The house must be broken into and entered; though it is not necessary that both should be done at one and the same time: for if the breach be made in one night, and the entry on another, it still is burglary. The breaking must be by some breach, or at least by taking out the glass of a window or door, picking a lock, opening it with a key, lifting up the latch, or unloosing any other fastening the owner has provided. Entering by the chimney is held burglarious, that being as much closed as the nature of the thing will permit; but entering a window or door left open, is no burglary. Knocking at the door, and when opened, rushing in with a felonious intent, is burglarious; so is entering a house under pretence of taking lodgings, and then robbing the landlord: or procuring a constable to gain admittance, in order to search the house, and then binding the constable and robbing the house. So if a servant opens and enters his master's chamber-door, with a felonious intent; or if any other person lodging in the same house, or in a public inn, opens and enters another's door with such evil design; it is deemed a burglary. Nay, if a servant conspires with a robber, and lets him into the house by night, it is burglary in both. With respect to the nature of entry: any, the least degree of it, is held sufficient, any part of the body, or any instrument held in the hand; for example, to step over the threshold; to put a hand or a hook in at a window to draw out goods;

goods ; or pistol to demand one's money, are all burglarious entries. If a person enters into the dwelling house of another, without breaking in, either by day or by night, with intent to commit felony ; or being in such house, shall commit felony, and shall in the night break out of the same, it is burglary.

By committing felony is understood robbery, murder, rape, or any other felony ; and entering with an intent to commit it, whether such intentions be carried into execution or not, provided it be by night, is burglary. Without such felonious intent, breaking and entry is only a trespass. But there are several statutes that make house-breaking, &c. in the day-time, felony also, without benefit of clergy, as will be shewn under the head of larceny from the house. Burglary, however, in any house belonging to the plate-glass company, with intent to steal the stock or utensils, is declared to be single felony only, and punishable with transportation for seven years. Where a man commits burglary, and at the same time steals goods out of the house ; it is also larceny ; and if he be acquitted of the burglary, he may, notwithstanding, be indicted for the larceny ; they being different offences. We come,

3dly. To treat of criminal offences against private property, of which there are three, *Larceny, Malicious Mischief, and Forgery.*

1. *Larceny or theft*, is attended with a breach of the peace, and is of two kinds, *simple* and *mixed*. *Simple larceny* is plain theft, accompanied with any other atrocious circumstance ; which, when the goods stolen are above the value of twelve pence, is called *grand larceny* ; when under that value, *petit larceny*. *Mixed* or compound larceny, has all the properties of the former, but accompanied with either one or both of the aggravations of a taking from one's *house* or *person*. We will speak of them in their turns.

Simple larceny then, is the felonious taking and carrying away the personal goods of another. Taking, here implies without the owner's consent ; therefore, no delivery of the goods from the owner to the offender upon trust, can ground a larceny. If I lend a man a horse to go a certain distance with, and he rides away with it ; or if I send goods by a carrier, and he does not deliver them, this is, in neither case, larceny ; but if the carrier opens the package, or pieces of wine I send by him, and robs me of part ; or if he delivers the goods according to the directions, and then takes them away, he is guilty of larceny : so is a man, at market, that rides away with a horse, whose paces he has desired to try. But, the servants of persons de-

ceased, accused of embezzling their master's goods, may be summoned to appear personally in the court of King's Bench, to answer their master's executors in any civil suit for such goods ; and shall, in default of appearance, be attainted of felony. And if any servant embezzles his master's goods to the value of forty shillings, it is felony ; except in apprentices and servants under eighteen years of age. But if such servant was not entrusted with the possession, but only had the care of the goods, as the butler of plate, and the shepherd of sheep, &c. the embezzling them is felony at Common Law. So if a guest robs his inn or tavern of a piece of plate, it is larceny ; for he hath not the possession delivered to him. So if a lodger runs away with the goods from his ready furnished lodgings. If a man steals the goods he has pawned, in order to defraud the pawn-broker, or robs his own messenger on the road, with intent to charge the hundred with the loss, he is as much guilty of larceny, as if the property he steals, was that of another man's.

To constitute larceny, there must not only be a *taking*, but a *carrying away*, and a bare removal of the things stolen is a sufficient carrying ; as, if a guest stealing goods out of an inn, had removed them from his chamber in his way out. This taking and carrying away must also be *felonious* ; for should a servant take his master's horse without his knowledge, and bring it home again, or should a neighbour take another's plough, which he finds in the field, and use and return it ; or should a landlord distrain for rent, when none is due, these would be trespasses only, but not felonies. The usual discovery of a felonious intent, is where it is clandestinely done, or where the party, being charged with the fact, denies it.

The felonious taking and carrying away must also be of the *personal* goods of another, not any part of his *real* property, or it cannot be larceny by the Common Law. Now, however, to steal or rip, cut or break, with intent to steal, any lead, or iron-bar, rail, gate, or palisado, fixed to a dwelling-house or outhouse, or in any court or garden thereunto belonging, is felony, subject to transportation for seven years : and to steal, damage, and destroy underwood or hedges, and the like ; to rob orchards or gardens, of fruit growing therein, to steal or otherwise destroy any turneps, potatoes, cabbages, parsnips, peas, or carrots, or the roots of madder, when growing, are by several statutes punishable by whipping, small fines, imprisonment, and satisfaction to the party wronged, according to the nature of the offence. Stealing by night any trees, roots, shrubs, or plants, to the value of five shillings, is felony in the principals,

principal's, aiders, and abettors, and in the purchasers thereof, knowing the same to be stolen; and stealing of any timber-trees, and of any root, shrub, or plant, by day or night, is subject to pecuniary penalties for the first and second offences, and is felony, and subject to transportation for seven years for the third. Stealing ore out of the mines, being part of the freehold, is not larceny, except it be the ore of black-lead; stealing of which, or entering the mine with intent to steal it, is felony, punishable with imprisonment and whipping, or transportation, not exceeding seven years; and, to escape from such imprisonment, or return from such transportation, is felony, without benefit of clergy. Stealing of writings belonging to a real estate is no felony, as appertaining to the freehold, but a trespass only.

Stealing, as appertaining to the precious, but a trespass only.
Stealing of bonds, bills, or notes, were not considered as larceny, but now, they are considered as money, and it is felony to steal them. Officers or servants of the Bank of England, secreting or embezzling any note, bill, warrant, bond, deed, security, money, or effects, intrusted with them or with the company, are guilty of felony, without benefit of clergy. It is equally criminal in the officers and servants of the South Sea Company. And, if any officer or servant of the Post-office shall secrete, embezzle, or destroy any letter or pacquet, containing any bank-note, or other valuable paper; particularly specified in the act, or shall steal the same out of any letter or pacquet, he shall be guilty of felony, without benefit of clergy; or if he shall destroy any letter or pacquet, with which he has received money for the postage; or shall advance the rate of postage on any letter or pacquet sent by the post, and shall secrete the money received by such advancement, he shall be guilty of single felony. Stealing of treasure-trove, at Common Law, is larceny, when it has been seized by the King, or him who has the franchise, but not else; and plundering or stealing from any ship in distress, is felony, without benefit of clergy.

Taking wild animals, unreclaimed, such as deer, hares, conies, from a forest, chace, or warren, fish from an open river or pond, or wild fowl from their natural liberty, comes not under the construction of larceny, at Common Law; but if they are reclaimed or confined, and may serve for food, as deer in an enclosed park, fish in a trunk, pheasants in a mew, stealing them is larceny. And, now, to hunt, wound, kill, or steal any deer, to rob a warren, or to steal fish from a river or pond, being armed or disguised, or not; to hunt, wound, kill, or steal any deer in the King's forests or chases inclosed, or in any other

inclosed place where deer have been usually kept ; or by gift or promise of reward to procure any person to join them in such unlawful act, is felony, without benefit of clergy. And every unauthorised person, his aiders, and abettors, who shall course, hunt, shoot at, or otherwise attempt to kill, wound, or destroy, any red or fallow deer in *any* forest, chase, or any *inclosed* ground, where deer are usually kept, shall forfeit the sum of twenty pounds ; or for every deer actually killed, wounded, destroyed, taken in any toil or snare, or carried away, the sum of thirty pounds, or double those sums, in case the offender be a keeper ; and, upon a second offence, shall be guilty of felony, and be transported for seven years : likewise, all persons armed with offensive weapons, that shall come into such places, with an intent to commit any of the said offences, and shall there unlawfully beat or wound any of the keepers, in the execution of their offices, or shall attempt to rescue any person from their custody, shall be transported for seven years. Transportation for seven years, is also inflicted on persons stealing, or taking fish in any water within a park, paddock, garden, orchard, or yard ; and on the receivers, aiders, and abettors : and the like punishment, or whipping, fine, or imprisonment, on such as take or kill conies by night, in any open warren ; and a forfeiture of five pounds to the owner of the fishery, is made payable by persons taking, or destroying, (or attempting so to do,) any fish, in any river or other water within any inclosed ground, being private property. If swans be lawfully marked, it is felony to steal them, though at large in a public river, or in a private river or pond, though unmarked. Stealing hawks in disobedience to the rules laid down, in 37 Edw. III. c. 19. is also felony. Stealing any valuable domestic animal, as horses, and other beasts of draught, and animals serving for food, as neat and other cattle, swine, poultry, and the like, and their produce while living, as milk or wool, is larceny : and, the flesh of animals, (whether wild or tame, serving for food,) when killed ; but, stealing animals, not serving for food, as dogs, cats, &c. and other creatures kept for pleasure, (though the owner may maintain a civil action against those who steal them,) does not amount to larceny. But stealing, or knowingly harbouring a stolen dog, or having in one's custody the skin of a dog that has been stolen, is punishable with very high pecuniary-penalties, or a long imprisonment ; or whipping in their stead, may be inflicted by two justices of the peace. Stealing a shroud out of a grave, which is the property of those who buried the deceased, is also larceny : but, stealing the corps

corps itself, which has no owner, is not larceny, unless some of the grave cloaths be stolen with it.

The punishment for grand-larceny, that is, if the thing stolen be above the value of twelve-pence, is, by the Common Law, death; but, as this standard was settled eight hundred years ago, when a fat ox could be bought for twelve-pence, the mercy of juries will lead them often to bring in larceny under the value of twelve-pence, when the thing stolen is in reality of much greater value. The punishment for petit-larceny, or larcenies, under twelve pence, is, at Common Law, whipping, or may be extended to transportation for seven years. By the benefit of clergy, a person convicted of simple larceny, to the value of thirteen pence, or thirteen hundred pounds, though guilty of a capital offence, may, for the first offence, have his life spared: and, in many cases of simple larceny, the benefit of clergy is taken away by statute, as from the principals, and accessories *before and after the fact*, in horse-stealing: for theft, by great and notorious thieves in Northumberland, for taking woollen cloth from off the tenters. But in these cases it is held, that it must be grand larceny, and persons in whose custody such cloth is found, must prove their innocence, or they are punishable for the first offence, by forfeiture of treble the value: for the second, by imprisonment also; and the third time it becomes a felony, subject to transportation for seven years. The benefit of clergy is also taken away for taking linens, fustians, calicoes, or cotton goods, from the place of manufacture; stealing sheep, bulls, cows, steers, bullocks, heifers, calves, and lambs, or killing them, with intent to steal the whole, or any part of the carcals, or aiding or assisting therein: for thefts in navigable rivers above the value of forty shillings, or being present, aiding, and assisting therat; for plundering vessels in distress, or that have suffered shipwreck; for stealing letters sent by the post; and also for stealing deer, fish, hares, and conies, under the peculiar circumstances mentioned in the Black-Act.

Mixed or compound larceny, is of two sorts; larceny from the *House*, and larceny from the *Person*.

From larceny from the *House*, except in the instance of stealing the stock or utensils of the plate-glass manufactory, which is subject only to transportation for seven years, the benefit of clergy is generally taken away, and with the following particularities: first, in larcenies above the value of twelve-pence, committed. 1. In a church or chapel, with or without violence, or breaking the same. 2. In a booth or tent in a market

or fair, in the day or night, by violence or breaking the same; the owner, or some of his family, being therein. 3. By breaking into and robbing a dwelling-house, in the day time, any person being therein. 4. In a dwelling-house, by day or night, without breaking the same, any person being therein, and put in fear; which amounts to a robbery; and, in both these last cases, 3 and 4, the accessories before the fact, is also excluded clergy. Secondly, in larcenies to the value of *five shillings* committed. 1. By breaking any dwelling house, or any out-house, shop, or warehouse thereunto belonging, in the day-time, although no person be therein; which now extends to aiders, abettors, and accessory before the fact. 2. By privately stealing goods, wares, or merchandize in any shop, warehouse, coach-house, or stable, by day or by night, though the same be not broken open, and though no person be therein; which likewise extends to such as assist, hire, or command the offence to be committed. Lastly, in larcenies to the value of *forty shillings*, in a dwelling-house, or its warehouses, although the same be not stolen, and whether any person be therein or no, (unless committed against their masters, by apprentices, under the age of fifteen): this also extends to those who aid or assist in the commission of the crime.

Larceny from the *person* is of two kinds; *privately* stealing and *robbery*.

Privately stealing from a man's person, above the value of twelve-pence, as by picking his pocket, or the like, without his knowledge is felony, without benefit of clergy.

Robbery, is taking from another his money or goods violently, and by putting him in fear; and, is felony, without benefit of clergy; but a mere attempt to rob, is only transportation for seven years. Should the robber, however, take one's purse, it is death, though he should afterwards return it. It is equally robbery to take any thing from a man in his presence, provided it be by menaces and violence, as to drive away his cattle before his face. The taking away a penny, equally with a pound, will make a man a robber, the sum thereof is immaterial; but *privately* stealing from a man's person, any sum, under the value of twelve-pence, and keeping it afterwards, by putting him in fear, is no robbery. Knocking a man down, and stripping him of his property while senseless; begging arms with a drawn sword; and forcibly extorting money under a pretence of sale, are all robberies, if a man parts with his money or property, through a mistrust or apprehension of violence. But it is doubt-

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ed whether compelling a chapman to sell his wares, and giving him the full value of them, be robbery or not.

2. The next offence against private property which the law punishes criminally, is *malicious mischief*.

Maliciously to cut down or destroy the powdike in the Fens of Norfolk and Ely, is felony: and it is equally so to destroy sea-banks, river-banks, public navigations and bridges: to burn any barn, or stack of corn or grain; or to imprison or carry away any subject, in order to ransom him, or make prey or spoil of his person or goods, in Northumberland, Cumberland, Westmoreland, and Durham, or being accessory *before* the fact, to such carrying away or imprisonment; or, to give or take any money or contributions, there called *Black-Mail*, to secure such goods from rapine, is felony, without benefit of clergy. Maliciously and unlawfully, in the night-time, to burn, or cause to be burned or destroyed, any ricks or stacks of corn, hay, or grain, barns, houses, buildings, or kilns; or to kill any horse, sheep, or other cattle, is felony; but the offender may make his election to be transported for seven years: and to maim or hurt such horses, sheep, or other cattle, is a trespass, for which treble damages may be recovered. To burn on any waste, between Candlemas and Midsummer, any galing, heath, furze, gofs, or fern, subjects the offenders to whipping and confinement in the house of correction. Captains and mariners, belonging to ships, and destroying the same, to the prejudice of owners or insurers, are guilty of felony, without benefit of clergy: and, making any hole in a ship in distress, or stealing her pumps, or aiding and abetting such offence, or wilfully doing any thing, tending to the immediate loss of such ship, is felony, without benefit of clergy. Maliciously to set on fire any underwood, wood, or coppice, is single felony. Wilfully and maliciously to tear, cut, spoil, burn, or deface, the garments or cloaths of any person, passing in the streets or highways, with intent so to do, is felony, by the Black Act. To set fire to any house, barn, or out-house, or any kind of mill, or to any hovel, cock, mow, or stack of corn, straw, hay or wood; or unlawfully and maliciously to break down the head of any fish-pond, whereby the fish shall be lost or destroyed; or, in like manner to kill, maim, or wound any cattle; or cut down or destroy any trees planted in an avenue, or growing in a garden, orchard, or plantation, for ornament, shelter, or profit; or, to procure by gift, or promise of reward, any person to join therein, is felony, without benefit of clergy, and the hundred shall be chargeable for the damage,

unless the offender be convicted—Maliciously to cut down any river or sea-bank, whereby lands may be overflowed or damaged; or to cut any hop-binds growing in a plantation of hops, or wilfully or maliciously to set on fire, or cause to be set on fire, any mine, pit, or depth of coal, is felony, without benefit of clergy. To use any violence, in order to deter any person from buying any corn or grain, to seize any carriage or horse carrying grain or meal to or from any market or sea-port, or to use any outrage with such intent; or to scatter, take away, spoil, or damage, such grain or meal, is punishable, for the first offence, with imprisonment and public whipping; for the second offence, or for destroying any granary where corn is kept for exportation, or taking away or spoiling any grain or meal in such granary, or in any ship, boat, or vessel, intended for exportation, is felony, and transportation for seven years. To set fire to any grafts, furze, or fern, growing in any forest or chace, is subject to a penalty of five pounds. Wilfully to spoil or destroy any timber, or other trees, roots, shrubs, or plants, is, for the first and second offence, subject to pecuniary penalties, and for the third, in the day-time, and even for the first, if at night, the offender shall be guilty of felony, and be transported for seven years. Stealing from gardens, or tilling fields of turneps, &c. is also transportation. Wilfully and maliciously to burn or destroy any engine, or other machine, belonging to any mine; or any fences for enclosures, pursuant to any act of parliament, is single felony, and punishable with transportation for seven years in the offender, his advisers, and procurers; and the like punishment is inflicted on such as break into any house, &c. belonging to the plate-glass company, or any manufactory for hosiery, with intent to steal, cut, or destroy any of their stock or utensils, or shall wilfully and maliciously cut or destroy the same. Wilfully and maliciously to burn, or cause to be burnt, any wain or cart, laden with coals, or with any goods or merchandizes; or any heap of wood, prepared, cut, or felled, for making coals, billets or talwood, is punishable with forfeiture of treble damages to the parties grieved, and ten pounds to the King; and any justice may bind over to the peace and good behaviour, such as threaten any one verbally to burn his house. Sending threatening letters to this purpose, has been shewn before to be felony, without benefit of clergy.

3. *Forgery* is the fraudulent making or alteration of a writing, to the prejudice of another man's right; which, at Common Law, is punishable with fine, imprisonment, and pillory; but various statutes have made it felony, without benefit of clergy.

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A multitude of special acts inflict death on the forging, altering of, or uttering as true, when forged, any bank-bills, notes or other securities; bills of credit issued from the Exchequer; South Sea bonds; lottery tickets or orders; army or navy debentures; East India bonds; writings, under seal of the London or Royal Exchange Assurance; of the hand of the receiver of the pre-fines, or of the accountant general and certain other officers of the court of chancery; a letter of attorney, or other power to receive or transfer stock or annuities; and on the personating a proprietor thereof, to receive or transfer such annuities, stock, or dividends; also on the personating, or procuring to be personated, any seaman, or other person, entitled to wages, or naval emoluments, or any of his personal representatives; or taking or procuring to be taken, any false oath, in order to obtain a probate, or letters of administration, in order to receive such payments; and the forging or procuring to be forged, and likewise the uttering or publishing as true, of any counterfeited seaman's will or power; also on the counterfeiting of Mediterranean passes; forging or imitating of any stamps to defraud the public revenue, and the forging of any manuscript licence or register. Forging or counterfeiting any stamp or mark to denote the standard of gold and silver plate, and certain other offences of the like tendency, are punishable with transportation for fourteen years. Certain frauds on the stamp duties, such as using the same stamps more than once, is felony, subject to transportation for seven years: and the like punishment is inflicted on such as counterfeit the common seal of the corporation for manufacturing plate glass, or knowingly demand money of the company, by virtue of any writing under such counterfeit seal.

Forging, or procuring to be forged, or assisting therein, or uttering as true, any forged deed, will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment thereof, or any acquittance or receipt for money or goods, with intention to defraud any person or corporation, is felony, without benefit of clergy, even for the first offence: and to forge, or cause to be forged, or utter as true, a counterfeit acceptance of a bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or any other security for money, or any warrant or order for the payment of money or the delivery of goods, is also felony, without benefit of clergy; and it is immaterial in forgeries, if they intend to defraud, whether they are in the name of a real or fictitious person.

But there is one determination of the judges respecting the forgery

officer be appointed, but before the court last mentioned of our Lord the King in Parliament : the Lord High Steward sitting in that court, rather as a chairman of the court than as a judge, and having a vote with the rest of the Lords, in right of his peerage ; but in the court of the Lord High Steward, which is held always in the recess of Parliament, he is the sole judge of matters of law, as the Peers are in matters of fact ; and of course he has no right to vote upon the trial.

At trials in full Parliament, the Lords Spiritual, by a determination of the House of Peers, have a right to stay and sit in court, in capital cases, till the court proceedsto the vote of guilty or not guilty ; but in the court of the Lord High Steward, no Bishop, as such, ever was or could be summoned. Indeed they have no right to be tried themselves in the court of the Lord High Steward ; for the privilege of being thus tried depends upon nobility of blood, rather than a seat in the house. Even in trials for capital offences, in full Parliament, there is no instance of the bishops sitting ; they withdraw voluntarily, but enter a protest, declaring their right to stay.

When it is said that a nobleman must be tried by his Peers, it is understood at the suit of the King, upon an indictment of high treason, petit treason, felony, or misprision thereof ; but in case of a præmunire, riot, or the like, and generally for all other crimes, out of Parliament (unless otherwise specially provided for by statute, as it is in many instances) though it be at the suit of the King, he shall not be tried by his Peers, but by the freeholders of the county.

3. The court of King's Bench is a court of criminal causes as well as civil ones, and takes cognizance of crimes, from high treason down to a breach of the peace : there indictments from all inferior courts may be removed, and tried by a jury of the county, out of which the indictment is brought.

4. The high court of Admiralty, held before the Judge of the Admiralty, has also a criminal jurisdiction, and takes cognizance of all crimes and offences committed either upon the sea, or on the coasts, out of the reach of any English county ; and of death- and mayhem happening in great ships, being in the main stream of great rivers, below the bridges of the same rivers, which are then a sort of ports or havens, such as are the ports of London and Gloucester. It is enacted that these offences shall be tried by commissioners, nominated by the Lord Chancellor ; namely, the Admiral or his Deputy, and three or four more ; (among whom two common law judges are constantly appointed, who, in effect, try all the prisoners) the indictment being first found by a

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Grand Jury of twelve men, and afterwards tried by another Jury as at Common Law : and that the course of proceedings shall be according to the law of the land. Though the Judges try the prisoner, the Judge of the Admiralty always presides, as does the Lord Mayor of London at the sessions of *oyer and terminer* in that city.

These four courts may be held at any place in the kingdom ; and this jurisdiction extends over crimes that arise in any part of it : but the jurisdiction of the following is limited.

5, 6. The courts of *oyer and terminer*, and general gaol delivery, are held before commissioners appointed by the King, among whom are usually two Judges of the courts of Westminster, twice every year, in every county throughout the kingdom, except the four northern ones, where they are held but once a year, and except in London and Middlesex, where they are held eight times a year. The commissioners of assize and *Nisi prius*, by which the Judges sit in the county, have been explained ; and also the commission of the peace, by which they likewise sit. I shall only add here, that all Justices of the Peace, of any county where-in the assizes are held, are liable to be fined, if they do not attend at such assize, in order to return recognizances, &c. and to assist the Judges in such matters as lie within their knowledge and jurisdiction. The fourth commission by which they sit is that of *oyer and terminer*, to hear and determine all treasons, felonies, and misdemeanors ; so that by virtue of this commission, they commonly proceed on indictments found at the assizes ; they have, therefore, a fifth commission, of gaol-delivery, which empowers them to try and deliver every prisoner, who shall be in gaol when the Judges arrive at the circuit-town, whensoever, and by whomsoever indicted, or for whatever crime committed ; so that the gaols are cleared twice a year. Sometimes, upon urgent occasions, the King issues a special commission, confined to offences that require immediate punishment, as was the commission to try the rioters, in 1780, in Surry.

7. The court of general quarter-sessions of the peace, must be held in every county, once in every quarter of a year, which is appointed to be in the first weeks after Michaelmas-day, Epiphany, the Translation of St. Thomas, and the 7th of July. It is held between two or more Justices of the Peace, of which one must be of the *Quorum*. Though this court seldom, if ever, tries any greater offences than small felonies, within the benefit of clergy, its jurisdiction extends to trying and determining all felonies and trespasses whatever. Indeed the commission provides, that in case any difficulty arises, they shall not proceed to judgment,

insolence or direct opposition, plainly tend to create disregard to their authority. The chief offences of either kind that are usually punished by attachment, are the following: 1. The unjust, oppressive, or irregular acting of inferior judges and magistrates, in the execution of their offices. 2. Acts of oppression, extortion, collusive behaviour, or culpable neglect of duty, in sheriffs, bailiffs, goalers, and other officers of the court. 3. Gross instances of fraud and corruption, injustice to clients, or other dishonest practices in attorneys and solicitors. 4. Non-attendance when summoned, refusing to be sworn, or to give any verdict, or eating and drinking without leave of the court, especially at the expence of the plaintiff or defendant, and the like, in jurymen. 5. Non-attendance when summoned, refusing to be sworn or examined, or prevaricating in their evidence, when sworn, in witnesses. 6. Disobedience to any rule or order made in the proceedings of a cause; non-payment of costs awarded by the court, or non-observation of awards duly made by arbitrators or umpires, after having entered into a rule for submitting to such determination, in parties to any suit or proceeding. Obedience to any rule of court, may be enforced against any member of parliament, by distress infinite. 7. Forceable delivery or rescue of a defendant, and the like, or disobedience to the King's great prerogative writs, *viz.* prohibition, *Habeas corpus*, &c. in any person, even in a peer. And, 8. Speaking or writing contemptuously of the court or judges, acting in their judicial capacity, by printing false accounts (or even true ones, without permission) of causes then depending in judgment. In short, any thing that demonstrates a gross want of respect to those courts.

The process of attachment is as follows: where the contempt is committed in the face of the court, the offender may, without any proof or examination, be instantly apprehended and imprisoned at the discretion of the judges: but in matters of which the court is not an eye-witness, if the judges, on *affidavit*, see reason to suspect that a contempt has been committed, they either make a rule on the suspected person, to shew cause why an attachment should not issue against him; or, in very flagrant instances, the attachment is issued without such a rule; as it does, if sufficient cause be not shewn to discharge it. When the party is brought into court by this process: he must either stand committed; or give bail to answer upon oath to such interrogatories as shall be put to him respecting the offence. These interrogatories are in the nature of a charge, and must be exhibited by the court within the first four days, and if any of the interrogatories

gatories should be improper, the defendant may refuse to answer them, and move the court to have them struck out. If the party can clear himself upon oath, he is discharged ; if not, he may be punished by fine or imprisonment, on both, and sometimes by corporal or infamous punishment ; and if he perjures himself in his answers, he may be prosecuted for the perjury. This method of obliging the defendant here to answer upon oath to a criminal charge, is not agreeable to Common Law in any other instance ; but being of high antiquity, by long and immemorial usage, it is become the law of the Land.

Chap. Sixth.

OF THE REGULAR METHOD OF PROCEEDING IN CRIMINAL COURTS.

HAVING described the courts of criminal jurisdiction, and explained the mode of *summary* conviction, we come now to that which is *regular*, the proceedings in which are twelve : 1. Arrest ; 2. Commitment and bail ; 3. Prosecution ; 4. Process ; 5. Arraignment, &c. 6. Plea ; 7. Trial, &c. 8. Benefit of clergy ; 9. Judgment ; 10. Revision of judgment ; 11. Reprieve or pardon ; and, 12. Execution.

I. And first, as to *arrest*, to which, in criminal cases, all persons, without distinction, are liable, but none may be apprehended, unless charged with such a crime, as will, at least justify holding him to bail. Arrests are made in four ways : 1. By warrant ; 2. By an officer without warrant ; 3. By a private person also with a warrant ; and, 4. By hue and cry.

1. Warrants for criminal arrests may, in extraordinary cases, be issued out by the privy council, or the secretaries of state, but generally they are granted by justices of the peace, on the oath of the party requiring such warrants, setting forth, that he knows or suspects the guilt of the person he wishes to apprehend, of the sufficiency of which oath the magistrate is judge. This warrant should be under the seal of the justice, should set forth

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the time and place of granting, the cause for which it is granted, and should be directed to the constable, or other peace-officer, (or it may be to any private person by name) requiring him to bring the party generally before *any* justice of the peace for the county, or only before the justice who granted it; in which last case, the warrant is called a *special* warrant. A *general* warrant to apprehend all persons suspected, or guilty of any crime, without naming or describing any one, is illegal, and will not justify the officer who acts under it; but if properly proved (though the magistrate, in granting such warrant, should exceed his power) will indemnify the officer. When a warrant is received by the officer, he is bound to execute it, so far as the jurisdiction of the magistrate and himself extends. A King's Bench warrant, issued by any of the justices of that court, extends over all the kingdom; but the warrant of a justice of the peace of one county, will not extend to another, unless backed by a magistrate of such other county. And, any warrant for apprehending an English offender, who may have escaped to Scotland, and *vice versa*, may be indorsed and executed by the local magistrates, and the offender conveyed back to that part of the united kingdom, in which such offence was committed.

2. Arrests by officers without warrants. A justice may himself apprehend, or, by word only, cause to be apprehended any person committing felony or a breach of the peace in his presence. The sheriff and coroner also, without a warrant, may apprehend any felon within the county. A constable may also, without warrant, take up any person breaking the peace in his presence, and carry him before a justice, and in case of a felony committed, or such a wound given as may occasion felonious death, he may, on probable suspicion, apprehend the offender, and for that purpose is justifiable in breaking open doors, even without a warrant, provided he has first asked for admittance. Nay, he may kill the felon, if he cannot otherwise be taken: and if he, or either of his assistants, be killed in such attempt, it is murder in all concerned. Watchmen, such as keep watch in all towns, from sun-setting to sun-rising, or such as are mere assistants to the constable, may by virtue of their office, arrest all offenders, especially night-walkers, and commit them to custody till the morning.

3. Any private person present (more especially a peace-officer) is bound by law, when any felony is committed, to apprehend the offender, on pain of fine and imprisonment, if he escapes by the negligence of the standers-by: and to follow such offender, he may break open any doors; he may even justify

justify killing him, if he cannot be taken alive; and should any be killed in endeavouring to apprehend him, it is murder. A private person may also arrest a felon or other person on suspicion: but he must not break open a door to do this; and if either party kill the other in the attempt, it is manslaughter. Any private person may apprehend beggars and vagrants.

4. Hue and cry is the old Common Law method of pursuing felons, and such as have dangerously wounded another. It is enacted that every county shall be so well kept, that immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and from county to county, and that hue and cry shall be raised upon the felons, from town to town, until they be taken and delivered to the sheriff; and that such hue and cry may more effectually be made, the hundred is bound to answer for all robberies therein committed, unless they take the felon. Hence the action against the hundred to recover loss by robbery. No hundred, however, shall be answerable for any robbery on a person travelling on the Lord's Day, except in going to church; but the inhabitants shall make hue and cry notwithstanding, on pain of forfeiting to the King as much money as the party was robbed of. Nor shall any person recover against the hundred, more than the value of two hundred pounds, unless the person robbed, shall at the time of the robbery, be together in company, and be in number two at least, to attest the truth of his or their being so robbed. And by the yearly land-tax acts, no receiver-general, or any of his agents employed for carrying of money on account of the said tax, shall maintain an action against the hundred, unless the persons carrying such money be together in company, and be in number three at the least. Also a robbery done in the night, shall not charge the hundred; but yet, if it be in the day-time or in so much light, as that to see a man's face, so as to know him, though it be before the sun-rising, or after the sun-setting, the hundred shall answer for it. But there are several notices to be given, by the party robbed, to make the hundred liable. No hue and cry is sufficient, unless made with both horsemen and footmen. And, the constable and like officer, refusing or neglecting to make hue and cry, forfeits five pounds, and the whole vill, or district, is liable to be amerced, if any felony be committed therein, and the felon escapes. Hue and cry may be raised either by precept of a justice of the peace, by a peace-officer, or by any private person knowing of a felony. The party raising it must acquaint the constable of the vill with all the circumstances which he knows of the felony, and with the person of the felon, on which the constable

is to search his own town and raise all the neighbouring villages and make pursuit with horse and foot, and in the prosecution of such hue and cry, the constable and his attendants have the same powers, protection, and indemnification, as if acting under the warrant of a justice of the peace. But, if a man wantonly and maliciously raises a hue and cry, without cause, he shall be severely punished, as a disturber of the public peace.

To encourage the apprehending of felons, certain rewards and advantages are, by Statute, bestowed on such as bring them to justice. Such as apprehend a highwayman and prosecute to conviction, shall receive a reward of forty pounds from the public; to be paid to them (or, if killed in the endeavour to take him, their executors) by the sheriff of the county, besides the horse, furniture, arms, money, and other goods taken upon the person of such robber, with a reservation of the right of any person from whom the same may have been stolen: and also ten pounds to be paid by the hundred indemnified by such taking. Such as apprehend and convict any offender against these statutes, respecting the coinage, shall (in case the offence be treason or felony) receive a reward of forty pounds; or ten pounds, if it only amount to counterfeiting the copper coin. Any person apprehending and prosecuting to conviction a felon guilty of burglary, house-breaking, horse-stealing, or private larceny to the value of five shillings from any shop, warehouse, coach-house, or stable, shall receive a certificate exempting him from all parish and ward-offices; which certificate he may assign over, and the assignee shall have the benefit of it. And, any person so apprehending and prosecuting a burglar, or felonious house-breaker, (or, if killed in the attempt, his executors) shall be entitled to a reward of forty pounds. Persons discovering, apprehending and prosecuting to conviction any person taking reward for helping others to their stolen goods, shall be entitled to forty pounds. Persons apprehending and prosecuting to conviction such as steal, or kill with an intent to steal, any sheep or other cattle, specified in the latter of the said acts, shall, for every such conviction, receive a reward of ten pounds: and, persons discovering, apprehending, and convicting felons and others, being found at large during the term for which they are ordered to be transported, shall receive a reward of twenty pounds.

II. The next part of criminal process is *commitment and bail*. When an offender is apprehended and brought before a justice of the peace, that justice is bound immediately to examine into the charge against him; acquit him, if innocent, and make him find bail or commit him to prison, if guilty, or if any suspicion lies against

against him. For this purpose, he is to take in writing the examination of such prisoner, and the information of those who bring him.

By the *Habeas corpus* act, to refuse bail to any person bailable is an offence in any magistrate, at the Common Law, against the liberty of the subject ; and, lest the intention of the law should be frustrated by magistrates requiring more bail than is necessary, it is declared, that excessive bail ought not to be required ; but if magistrates take insufficient bail, and the criminal doth not appear at the time he is bound by such a bail to appear, they are liable to be fined. The person who is to take the bail may however, examine them on their oaths concerning their sufficiency. Admitting bail, also, where it ought not, is punishable by the judge of assize by fine, or punishable as a negligent escape, at Common Law ; and, if any officer bail any not bailable, he shall have three years imprisonment, and make fine at the King's pleasure. Persons acknowledging or procuring to be acknowledged any bail, in the name of any other not privy to the same, or guilty of felony, without benefit of clergy ; or, if any one shall personate another before those who have authority to take bail, so as to make him liable to the payment of any sum of money in that suit or action, he shall be guilty of felony (but within clergy). Bail may be taken in open court, or, in some cases, by the sheriff, coroner, or other magistrate. But let us see what offences are *not* liable, we shall then learn what *are*. No justice of peace is allowed to take bail for a charge of treason, murder, or even manslaughter, if the prisoner be clearly the killer and not barely suspected ; or if any indictment be found against him. Persons committed for felony, and breaking out of prison, cannot be bailed by justices : nor any of the following, *viz.* persons outlawed ; such as have abjured the realm ; approvers, of whom we shall speak hereafter ; persons taken in the fact of felony ; such as are charged with arson ; and excommunicated persons. The following are bailable or not, at the discretion of the justices ; thieves openly known ; persons charged with other felonies, or manifest and enormous offences, not having a good character ; and accessories to felony, that labour under a bad reputation. But the following *must* be bailed if proper security be offered, *viz.* persons of good character charged with a bare suspicion of manslaughter, or other inferior homicide , or such persons charged with petit larceny or any such felony, not before-mentioned ; or such persons accessory to felony. The court of King's Bench, however, (or any judge thereof, in time of vacation) may bail for

for any crime, according to the circumstance of the case, even for treason or murder; except such persons as are committed by either house of parliament during the sitting of the sessions, or such as are committed for contempts by any of the King's superior courts of justice. In short, where the offence is not bailable, the prisoner is to be committed to goal, for trial, by the *mittimus* of the justice, that is, a warrant under his hand and seal, specifying the cause of his commitment. But, during this confinement, it being only for safe custody, the prisoner should be neither loaded with needless fetters, or subjected to any other hardship than the goaler, in his discretion, shall think necessary, in order to keep him safely.

III. The next step to the conviction and punishment of offenders is their *prosecution*, of which there are four modes; *viz.* 1. Presentment; 2. Indictment; 3. Information; and, 4. Appeal. The first two are upon a previous finding of the fact by a grand jury; the other without such finding.

1. A Presentment, is the cognizance taken by the grand jury of any offence, from their own knowledge and observation; without any bill of indictment laid before them; such as the presentment of a nuisance, a libel, and the like; upon which the officer of the court frames an indictment, before the party can be called upon to answer it. There are also presentments which are inquisitions of office, or the act of a jury summoned by the proper officer to enquire of matters relative to the crown, from evidence laid before them, some of which are in themselves convictions. Of this kind are *solo de se*; flight of persons accused of felony; *deodands*, &c. There are also presentments of petty offences, in the sheriff's tourn or court leet, whereon the president officer may set a fine. There are other inquisitions that are not in themselves convictions, but which may be afterwards inquired into; particularly that of the coroner on the death of a man; in which case the offender so presented, may dispute the truth of it.

2. Indictments are written accusations of one or more persons, of a crime or misdemeanour, at the suit of the King, preferred to, and presented upon oath by, a grand jury. Grand juries consist of respectable freeholders (generally the men of most consequence in the county) summoned by the sheriff, every session of the peace, and every assize; some out of every hundred. The number summoned is twenty-four, and as many of these as attend, not less than twelve, nor more than twenty-three, (that twelve may be a majority) are sworn to inquire for the body of the county, present and do and execute all those things

things which, on the part of our Lord the King, shall then and there be commanded them. This grand jury is previously instructed in the articles of its enquiry, by a charge from the judge who presides on the bench. They then withdraw, and sit and receive indictments preferred to them in the name of the King, but at the suit of any private prosecutor. As the finding of an indictment, or allowing it to be valid, is only in the nature of an accusation to be afterwards tried; this jury is only to examine into the evidence in behalf of the prosecution: that is, they are to enquire upon their oaths, whether there be sufficient cause to call upon the party accused to answer the accusation or not.

If the grand jury, on hearing the evidence in behalf of the prosecution, think it a groundless charge, they write on the back of the bill, "not found," or, "not a true bill," and the party is immediately discharged. But a fresh bill may afterwards be preferred to a subsequent grand jury. If the jury are satisfied with the truth of the charge, they indorse upon it, "a true bill." The indictment is then said to be found, is publicly delivered into court, and the party stands for trial.

Note. To find a bill, twelve of the jury must assent.

3. Informations, which are species of prosecution at the suit of the King, without any presentment, or previous finding of the bill by a grand jury, are of two sorts: that partly at the suit of the King, and partly at the suit of a subject; and that wholly in the name of the King. The former is usually brought upon penal statutes, which inflict a penalty on conviction of the offenders; one part to the use of the King, the other to that of the informer. On which I shall only observe, that no prosecutions upon any penal statute, the suit and benefit whereof are limited in part to the King, and in part to the prosecutor, can be brought by any common informer after one year is expired since the commission of the offence; nor on behalf of the crown after a lapse of two years longer; nor, where the forfeiture is originally given to the King, can such prosecution be tried, after the expiration of two years from the commission of the offence.

Informations in the name of the King only, are of two sorts; those properly his own suits, filed *ex officio* by the attorney-general, and those in which the King is nominal prosecutor, which last are, at the relation of some private person or common informer, filed by the master of the Crown Office, who is the standing officer for the public. Prosecutions that are filed by the attorney-general in virtue of his office, are for such enormous

mous misdemeanors as tend to disturb the King's government, or affront him in the regular discharge of his duty; those filed by the master of the Crown-Office on complaint of a subject, are any gross misdemeanors, riots, batteries, libels, and other flagrant immoralities. Informations thus filed must be tried by a petit jury of the county, where the offence arises, and if the offender be found guilty, the court of King's bench must be reported to, to punish him. But, it must be observed, that these informations are confined to mere misdemeanors only. And, to prevent vexatious informations brought by malicious prosecutors, it is enacted, That the clerk of the crown shall not file any information, without express direction from the court of King's Bench; and that every prosecutor, permitted to promote such information, shall give security by a recognizance of twenty pounds to prosecute the same with effect, and to pay costs to the defendant, in case he be acquitted thereon, unless the judge who tries the information, shall certify there was reasonable cause for filing it; and, at all events, to pay costs, unless the information shall be tried within a year after issue joined: but informations filed by the attorney-general, are not liable to the restraints of this act.

4. An Appeal is a mode of prosecution still in force, but in little use, from the great nicety required in conducting it: it implies an accusation by one private person against another, for some felony or mayhem, demanding punishment of the offender for the injury committed. An appeal of felony may be brought for larceny, rape, and arson committed against one's self, or for murder or manslaughter committed against a relation, but such relation must be a husband, and the appeal brought by the wife for his death; or an ancestor, and the appeal for his death brought by the heir male, and confined to the four nearest degrees of blood. Such power of appeal being given to the wife for the loss of her husband; if she marries again, before or pending her appeal, it is lost; or if she marries after judgment, she cannot demand execution. The heir that brings an appeal must be the next heir by the course of Common Law, at the time his ancestor was killed, and such appeal is subject to three rules. 1. If the ancestor killed, leaves an innocent wife, she only shall have the power of appeal, and not the heir. 2. If there be no wife, and the heir be accused of the murder, the person, who next to him would have been heir-male, shall bring the appeal. 3. If the wife kills her husband, the heir may bring the appeal: and, all appeals of death, must be sued within a year and a day after the death of the party.

These

These appeals may be brought, previous to an indictment, and if the defendant be acquitted, he cannot afterwards be indicted for the same offence. If the defendant be acquitted, the person appealing shall suffer one year's imprisonment, and pay a fine to the King, besides restitution of damages to the party for the imprisonment and infamy which he has sustained: and if the appellant be incapable to make restitution, his abettors shall do it for him, and also be liable to imprisonment. But this is, if the appeal shall appear to the court to have been malicious. This discouragement has occasioned the disuse of appeals.

If the appellee or defendant be guilty, he shall suffer the same judgment, as if he had been convicted on indictment; with this difference, that an indictment being at the suit of the King, he may either pardon or remit the execution, but on an appeal, which is at the suit of a private person, for an atonement of the injury, the King can no more pardon it, than he can remit the damages recovered on an action of assault. The punishment, however, of the criminal may be remitted and discharged by the concurrence of all parties interested; and as the King, by his pardon may frustrate an indictment, so may an appellant, by his release, discharge an appeal.

IV. Indictment, however, being the general mode of process, I shall confine my observations to this, pointing out any variation that may arise from the method of prosecuting by either information or appeal.

After the indictment found, the offender, supposed to be in custody before such finding of the indictment, is to be immediately put upon his trial; but if, in capital cases, he hath escaped, or secretes himself; or, in smaller offences, having been bound over, doth not appear at the assizes or sessions (as an indictment may be found against him in his absence) process must issue to bring him into court; for the indictment cannot be tried unless he personally attends.

If upon a writ issued, summoning his attendance, he does not appear, a warrant is made out to apprehend him, commanding the sheriff to bring him up at the next assizes. If he absconds, he may, if it is thought proper, be outlawed. But, an outlawry, in treason or felony, amounts to a conviction and attainer of the offence charged in the indictment, as much as if the offender had been found guilty. But such outlawry may be reversed by a writ of error, and the proceedings therein are so exceedingly nice (as indeed they should be) that if any one single, minute point be omitted or misconducted, the whole out-

lawry may be set aside; on which the party accused is admitted to plead and defend himself against the indictment.

V. The offender being brought into court, he is to be immediately *arraigned*; which is calling him to the bar to answer the charge against him. He is to be called there by name, and brought without irons or any shackles, unless there is danger of his escaping. When at the bar, he is called upon, by name, to hold up his hand, by which he owns himself to be the person so called. The indictment then is read to him, after which he is asked, whether he is guilty or not guilty of the crime whereof he stands indicted. Where there is an accessory to the crime, he cannot be tried so long as the principal remains liable to be tried hereafter; but, if the principal be once convicted, and before attaingder (that is, before he receives judgment of death or outlawry) he is delivered by pardon, the benefit of clergy or otherwise; or if the principal stands mute, or challenges peremptorily above the legal number of jurors, so as never to be convicted at all; in any of these cases, in which no subsequent trial can be had of the principal, the accessory may be proceeded against, as if the principal felon had been attainted. And upon the trial of the accessory, as well after as before the conviction of the principal, the accessory is at liberty (if he can) to controvert the guilt of his supposed principal, and to prove him innocent of the charge, as well in point of fact as in law.

Should a criminal, on being arraigned, confess the fact, the court hath nothing to do but to award judgment; but it is very tender on this head, and generally advises the prisoner to retract his confession, and plead to the indictment. If a criminal arraigned for treason or felony, without benefit of clergy, confesses the fact, and accuses others his accomplices of the same crimes, he is called an Approver, and if the person so accused, is convicted upon his trial, such approver shall be pardoned; if not, he shall receive judgment to be hanged on his own confession of the indictment. But it is in the discretion of the court to permit this approvement or not, and it has been long in disuse on account of the many false and malicious accusations of desperate villains. Especially as it has also been customary for the justices of the peace, before whom any persons are brought for felony, to admit some one of their accomplices, to become a witness (called King's evidence) against his fellows, upon an assurance which the judges of goal-delivery have generally countenanced, that if such accomplice makes a full and complete discovery of that and all other felonies to which he is examined by such justice, and afterwards gives his evidence without prevarication.

cation or deceit, he shall not himself be prosecuted, for that or any other previous offence of the same degree.

If a criminal stands mute, and will not plead to the indictment, it amounts to a confession of the crime. If he is really dumb, the judges of the court (who are to be counsel for the prisoner, and to see that he hath law and justice) may proceed to trial, as if he had pleaded not guilty; but, it is doubted whether sentence of death can be passed on such a person, he not being able to say any thing in arrest of judgment. A prisoner's making no answer at all, when arraigned; answering foreign to the purpose; or having answered not guilty, refusing to put himself upon his country, is construed as standing mute; and it has been held to be so, when a prisoner has cut out his own tongue.

VI. Upon the pleading of the prisoner, let us next see what plea he can make, or what matter he can alledge in his defence. Now there are five species of pleas, which the law hath thus denominated. 1. A plea to the jurisdiction; 2. A demurrer; 3. A plea in abatement; 4. A special plea in bar; or, 5. The general issue of not guilty.

1. A plea to the jurisdiction is an exception to the authority of the court to try the offence.

2. A demurrer to the indictment, is incident to civil cases as well as criminal ones, and is where the prisoner does not deny the charge, but insists that the fact, as stated, is no felony, treason, or whatever the crime is alledged to be: and even when in demurrer the point of law is adjudged against the prisoner, no advantage is taken of his confessing the fact; but he is notwithstanding allowed to plead not guilty.

3. A Plea in abatement, is principally for a wrong name or a false addition given to the prisoner in the indictment, which if found by a jury, the indictment shall be null: but this is of little advantage to the prisoner, as a new indictment may be framed according to what the prisoner avers his true name or addition to be, which he is obliged to set forth.

4. A Special plea in bar, is a much more substantial plea. This goes to the merits of the indictment, and gives a reason why the prisoner ought not to be tried for the offence alledged. These are of four kinds; a former acquittal, a former conviction, a former attainder, or a pardon.

A *former acquittal*. A person once fairly acquitted, upon any prosecution, before a court competent to try the offence, may plead such acquittal, as a bar to any fresh indictment for the same identical crime.

A former conviction for the same identical crime, though no judgment was given, being suspended by the benefit of clergy or other causes, is a good plea in bar of an indictment. But,

A former attainer, is a good plea, in bar for the same or another felony; for a prisoner, by attainer, being dead in law his blood being already corrupted, and all his property forfeited, it would be absurd to endeavour to attaint him a second time: unless the former attainer, had been reversed for error by act of parliament, or pardon. But where the attainer was upon indictment, such attainer is no bar to an appeal as the King may pardon any sentence upon indictment. An attainer for felony is no bar to an indictment for treason, the forfeiture and manner of death for the two crimes being different; no is it any bar, where a man is principal in a felony to which there are accessories to be tried, as such accessories cannot be tried till the principal is convicted. In short, a former attainer is not sufficient to bar an indictment, but in cases where a second trial would be superfluous.

But a *pardon* is always a good plea in bar. Pardon pleaded before trial, or *before* sentence is passed, is much more advantageous than pleading it *after* sentence: as it prevents the corruption of blood which the sentence inflicts; for such corruption cannot be restored but by act of parliament: but, as pardons we shall say more hereafter.

Let me observe however here, with respect to pleas in bar that though in civil actions, a man, if he fails in one plea, cannot make use of another, of course, it behoves him to study well his first plea; yet in capital prosecutions, as well upon appeal as indictment, if the prisoner's first plea fails, he may plead the general issue, not guilty. On which plea of

5. General issue, the criminal can only be condemned. Here he is allowed to make the best defence he can, either by justifying the fact, or controverting the evidence against him. On pleading not guilty, he is asked how he will be tried; to which he is to answer, if a commoner, "by God and my country that is, his jury; if a peer, "by God and my peers;" and should he refuse to make this answer, he is deemed to stand mute, and, of course, is convicted.

VII. The trial of peers in the court of Parliament, or the court of the Lord High Steward, has been mentioned already; it remains only to observe, that it differs little from trial by jury, except that the peers need not all agree in their verdict and no special verdict can be given, the lords of Parliament and the Lord High Steward (if trial be in his court) being judges sufficient.

sufficiently competent of the law in these cases ; but the majority, consisting in the least of twelve, will bind the rest.

But the trial by jury is the grand bulwark of an Englishman's liberties, secured to him by *Magna Charta*. By which it is enacted, That no free man shall be taken, imprisoned, banished, or, in any other way, destroyed, but by the legal judgment of his peers, or by the law of the land.

When a prisoner hath pleaded not guilty, and put himself for trial upon his country, that is, his jury ; the court, by the clerk says, " God send thee a good deliverance."

Forty eight jurymen are here summoned, and returned by the sheriff from the neighbouring freholders in the county where the fact was committed. These are to try all felons that may be called on their trial at that session. In cases of high-treason, whereby corruption of blood may ensue (except treason in counterfeiting the King's coin or seals) or misprision of such treason, it is enacted, That the prisoner shall have a copy of the indictment, five days before the trial, and a copy of the panel of jurors, two days before his trial ; and he shall have the same compulsive process to bring his witnesses for him, as was usual to compel their appearance against him. And, all persons indicted for high-treason, or misprision thereof, shall have a list of all the witnesses to be produced, and of the jurors impanelled, with their professions and places of abode, delivered to him ten days before the trial, and in the presence of two witnesses, the better to enable him to make his challenges and his defence, except in treasons respecting the King's coin and seals.

The trial being called, the jurors are to be sworn as they appear, to the number of twelve, unless challenged by the prisoner or on the part of the King ; and here, as in civil cases, challenges or exceptions may be made to the whole array, or to the separate polls, and for the same reasons. Also, where an alien is indicted, the jury should be half foreigners, if so many can be found in the place (except in trials for treason, aliens being improper judges of allegiance, and in trials of gypsies). In capital cases, the prisoner is allowed an arbitrary or capricious challenge, called *peremptory*, to thirty-five jury-men, without shewing any cause at all, that he may not be disconcerted by not having a good opinion of his jury : but this peremptory challenging is denied to the King, who shall challenge no jurors without assigning a cause certain, to be tried and approved by the court. But the King's counsel need not assign the cause of challenge, till all the panel is gone through, unless there cannot be a full jury without the persons so challenged. If a prisoner

soner challenges more than thirty-five peremptorily, and will not retract his challenge, he is deemed to stand mute, and his conviction, of course, follows. In trials of felony, a prisoner is not allowed more than twenty peremptory challenges, if he challenges more, such challenge is set aside, and such juror is sworn. If, on account of these challenges, or a want of a sufficient number of jurymen, the number of twelve cannot be had, the court may order a new panel to be instantly returned. The twelve jurymen are separately sworn "well and truly to try "and true deliverance make, between our sovereign Lord the "King, and the prisoner at the bar, and a true verdict give, "according to their evidence."

The jury being sworn, if it be a cause of any consequence, the King's counsel usually open the indictment, examine the witnesses, and enforce the prosecution by argument. But the prisoner in any capital crime, is allowed no counsel on his trial, the judge being appointed to be his counsel; and, because the evidence to convict a prisoner, should be so manifest as not to be contradicted. Counsel is, however, allowed him, where a point of law shall arise, and be thought proper to be debated. The judges indulge him likewise so far, as to suffer counsel to examine the evidence even in matters of fact; but, persons indicted for such high treason as works a corruption of blood, or misprision thereof (except treason in counterfeiting the King's coin or seals) may make their full defence by counsel, not exceeding two, to be named by the prisoner, and assigned by the court or judge, and the same indulgence is allowed to parliamentary impeachments for high-treason.

In all cases of high-treason, petit-treason, and misprision of treason, *two* lawful witnesses are required to convict a prisoner, unless he shall willingly or without violence confess the same; and except in treasons for counterfeiting the King's coin, seals, and signatures, or for importing counterfeit, foreign money current in this kingdom, and impairing, counterfeiting, or injuring any current coin. If the prisoner confesses the fact, such confession must be in *open court*: but, it is held on these words, that a confession, when out of court, before a magistrate or person authorized to take it, and proved by two witnesses, is sufficient: both witnesses must also be to the same overt act of treason, or one to one overt act, and the other to another overt act of the same species of treason, and not of distinct heads or kinds; and no evidence shall be admitted to prove any overt act not expressly laid in the indictment. But in almost every accusation, one positive witness is sufficient. One witness is not allowed:

allowed to convict a man indeed for perjury, because there is their only one oath against another; and in treason, two witnesses are required, that a man may not fall a sacrifice to fictitious conspiracies; but as in other crimes, the very privacy of their nature often excludes the possibility of having more witnesses than one, it would be wrong to let such escape unpunished.

Mere similitude of hand-writing, in two papers shewn to a jury, is no evidence that both were written by the same person, but evidence, well acquainted with the party's hand, that the paper in question is believed to have been written by him, the jury is to judge of.

The mother of a bastard-child, concealing its death, must prove, by one witness, that the child was born dead, or such concealment shall be evidence of her having murdered it.

The law holding it better that ten guilty persons should escape rather than that one innocent man should suffer, all presumptive evidence is very cautiously admitted, and the following rules are usually observed. 1. Never to convict a man for stealing the property of a person unknown, merely because he will not account how he came by it, unless an actual felony be proved of such property; and, 2. Never to convict a person of murder or manslaughter, unless the dead body be found. Formerly witnesses for the prisoner, in capital cases, were not allowed to be examined at all, or at least not be examined upon oath; but now, in all cases of treason and felony, all witnesses for the prisoner, are admitted to be examined upon oath, in like manner as the witnesses *against* him.

When the evidence against and for the prisoner is gone thro', and he has said what he thought proper in his defence, the jury are to consider of it, as in civil causes, and deliver in their verdict: neither can they be discharged till they have. Here, indeed, in a criminal case, no jury can give a privy verdict, it must be open; and also general, either guilty or not guilty or special, setting forth all the circumstances of the case, and praying the judgment of the courts on the facts stated: this is where they doubt the matter of law, though, if they think proper to hazard a breach of their oaths, they have a right to determine the matter themselves, and if their verdict be notoriously wrong, they may be punished, and their verdict set aside, by attaint, at the suit of the King, but not at the suit of the prisoner. In many instances where, contrary to evidence, the jury have found the prisoner guilty, their verdict hath been mercifully set aside, and a new trial granted by the court of King's Bench:

but

but there never was an instance of a new trial being granted, where the prisoner was *acquitted* on the first.

Should the jury find the prisoner not guilty, he is for ever discharged of the accusation (but the civil law discharges him only from the same accuser, not from the same accusation) except he be appealed of felony, within a year and a day of the completion of the felony being committed; and upon such discharge, or for want of prosecution, he shall be immediately set at liberty, without payment of any fee to the gaoler. If the prisoner be found guilty he is said to be convicted; he may also be convicted on his own confession, or by standing mute.

On conviction, in general, for any felony, the prosecutor is allowed the reasonable expences of the prosecution, out of the county-flock, if he petitions the judge for that purpose: and poor persons, bound over to give evidence, (except in Middlesex) are entitled to be paid their charges, as well without conviction as with it. On a conviction of larceny, the prosecutor, as a reward for the prosecution, shall have his goods restored to him, or the value of them, out of the offender's goods, if he has any, by a writ to be granted by the justices; and though such goods may have been sold in open market, the buyer is obliged to give them up, even to his own loss; and it is now usual for the court, upon the conviction of the felon, to order, (without any writ) immediate restitution to the prosecutors, of such goods as are brought into court; or else the prosecutor, without such writ of restitution, may peaceably retake his goods wherever he can find them, unless they have been fairly purchased; or, if the felon be convicted, and escape with life, either through benefit of clergy or pardon, the party robbed may bring his action of trover against him for his goods, and recover a satisfaction with damages; but he cannot bring such action before prosecution, lest it should encourage compounding of felony; nor can the party retake them, if it be done with a design to smother or compound the larceny. Such composition being a heinous offence.

Persons convicted of a misdemeanour, as of a battery, imprisonment, or any other offence, immediately affecting an individual, are sometimes permitted by the court to talk with the prosecutor, before judgment is passed; to try if they can make the matter up, and if the prosecutor declares himself satisfied, the punishment inflicted is but trivial; this, though a dangerous practice, is done to reimburse the prosecutor his expences, and make him some private compensation, without the trouble of a civil action.

After

After conviction, judgment, that is sentence, follows ; unless stayed or arrested by benefit of clergy, or some other intervening circumstance.

VIII. Benefit of clergy was an institution to exempt the clergy from criminal process before a secular judge, which grew to the exemption of all who could read, till, under Hen. VII. a distinction was made between laymen and clerks in orders, subjecting the former to be burnt with a hot iron in the left thumb, and denying them this privilege a second time. Lords of parliament and peers of the realm, may have the benefit of their peerage, equivalent to that of clergy, for the first offence, without being burnt in the hand, for all offences clergyable to commoners ; and also for the crimes of house-breaking, highway-robery, horse-stealing, and robbing of churches. But it being afterwards considered, that the punishment of death was too severe for simple felony, the benefit of clergy is allowed to all those who are entitled to ask it, without requiring them to read ; but, that where any person is convicted of any theft, or larceny, and burnt in the hand for the same, he shall also, at the discretion of the judge, be committed to the house of correction, or public workhouse, to be there kept to hard labour, for any time, not less than six months, and not exceeding two years ; with a power of inflicting a double confinement, in case of the offender's escaping from the first. And if any persons shall be convicted of any larceny, either grand or petit, or any felonious stealing or taking of money, or goods and chattles, either from the person or house of any other, or in any other manner, and who, by the law, shall be entitled to the benefit of clergy, and liable only to the penalties of burning in the hand or whipping, the court, in their discretion, instead of such burning in the hand or whipping, may direct such offenders to be transported for seven years ; and, if they return, or are seen at large in this kingdom, within that time, it shall be felony without benefit of clergy. And, all offenders, liable to transportation, may, instead thereof, at the discretion of the court, if males, be employed in hard labour, for the benefit of the navigation of the river Thames ; or, whether males or females, be confined to hard labour, in the house of correction, for any term, not less than three years, nor more than that for which they are liable to be transported, in any case not exceeding ten years ; with a power of subsequent mitigation, in case of their good behaviour ; but in case of escapes their confinement is doubled, for the first offence, and it is felony, without benefit of clergy, for the second.

We

We may hence see to what persons the benefit of clergy is at this day allowed. It is allowed to all clergymen, without branding, and of course without transportation (which is a punishment substituted instead of branding or burning) who are immediately to be discharged, and this as often as they offend: also all lords of parliament and peers of the realm, having place and voice in parliament (which is held to extend to peerses) shall be discharged without either burning in the hand or imprisonment as real clerks convict, but this only for the first offence. And all others, not in orders, male or female, shall, for the first offence, be discharged of the punishment of clergyable offences, on being burnt in the hand, and suffering a discretionary imprisonment; or, in case of larceny, on being transported for seven years, if the court shall think fit.

By the Marine law, however, the benefit of clergy is not allowable in any case whatever; and therefore, where offences are committed within the admiralty-jurisdiction, which would be clergyable if committed on land, the constant rule is to acquit and discharge the prisoner.

Besides the corporal punishment inflicted on such as are allowed the benefit of clergy, the offender forfeits all his goods to the King. After conviction, till he receives the judgment of the law, by burning, or the like, or is pardoned by the King, he is considered as a felon, and is subject to all the disabilities and other incidents of felony. After burning or pardon, he is discharged for ever of that and all other felonies before committed of a clergyable nature, but not of felonies from which such privilege is excluded. By burning or pardon he is restored to all capacities and credits, and the possession of his lands, as if he had never been convicted. And as to peers and clergymen, they have these privileges and advantages, without any burning, which others are entitled to after it.

IX. We come next to judgment and its consequences. When the jury have delivered in their verdict, guilty, in capital offences, the prisoner is asked what he has to offer in arrest of judgment. If the defendant be found guilty of a misdemeanor, (the trial for which, if he has once appeared, may be carried on in his absence) a warrant is issued to bring him into court to receive judgment, and, if he absconds, he may be outlawed; but, whenever he appears in person, he may, either on a capital or inferior conviction, now, as well as at his arraignment, offer any exceptions to the indictment, in arrest or stay of judgment; as for want of sufficient certainty in setting forth either the person, the time, the place, or the offence; and if the objections be valid

lid, the whole proceedings shall be set aside ; but the offender may be indicted again : And indeed so nice and tender is the law, in favour of the prisoner, that more knaves escape, by exceptions in indictments than by their innocence.

The King's pardon, as was mentioned before, may here be pleaded in arrest of judgment, and with the same advantages as upon arraignment, *viz.* saving the corruption of blood, which, if not pleaded till after the sentence, nothing but an act of parliament can restore.

If nothing be offered in arrest or stay of judgment, sentence is now to be passed ; which is different, according to different crimes. When sentence of death is past, its immediate consequence is attainer, the effect of which is forfeiture and corruption of blood.

1. There is forfeiture of real estates, and forfeiture of personals. By attainer in high-treason, a man forfeits to the King all his real and personal property, whether in possession or claim, and this forfeiture takes place at the time the treason was committed, so as to render void all intermediate sales and incumbrances, but not those before the fact ; of course the wife's jointure is not thus forfeited, but her dower expressly is, and yet the husband shall be tenant by the courtesy of the wife's lands, if the wife be attainted of treason, that not being prohibited by the statute. If a traitor dies before judgment pronounced, or is killed in open rebellion, or is hanged by martial law, no forfeiture takes place ; for, as he never received sentence, he was never attainted. But should the Chief Justice of the King's Bench, in person, as Supreme Coroner, upon the view of the body killed in open rebellion, record it, and return the record into his own court, both lands and goods shall be forfeited.

In certain treasons relating to coin, it is provided by some of the modern statutes which create the offence, that it shall work no forfeiture of lands, save only for the life of the offender; and by all, that it shall not deprive the wife of her dower.

In petit-treason and felony, the offender also forfeits to the crown all his chattel interests absolutely, and the profits of all freehold estates, during life, and after his death, all his lands and tenements in fee-simple, (but not those in tail) for a year and a day, in which time the King may commit what waste he pleases. This year, day, and liberty of waste, are now usually compounded for. After this year and a day, in gavel-kind tenure, it descends to the heir, but in other tenures it escheats to the lord. These forfeitures for felony arise also only on attainer, and, therefore, a *felo de se*, who is never attainted, forfeits.

feits no lands of inheritance or freehold. They likewise here, as well as in treason, take place at the time when the offence was committed ; so as to render void all intermediate incumbrances and conveyances.

In misprision of treason, and striking in Westminster-hall, or drawing a weapon on a Judge, there sitting on the bench, in office, the profits of the offender's goods are forfeited during his life. Even for flight, on an accusation of treason, felony, or petit larceny, if the jury find the flight, whether the party be found guilty or acquitted, he forfeits his lands and chattels : but this flight the jury seldom finds, it being thought too great a punishment for the offence.

Between the forfeiture of lands, and of goods and chattels, there is this difference : lands are not forfeited before attainder, whereas goods and chattels are forfeited by conviction ; for, in many cases, where goods are forfeited, there is no attainder. In outlawries for treason or felony, lands are forfeited only by the judgment, whereas goods and chattels are forfeited on the proclamation of outlawry. The forfeiture of lands takes place back at the time the fact was committed ; whereas, that of goods and chattels takes place only at the time of conviction ; a traitor, therefore, may, *bona fide*, sell any of his chattels, real or personal, for the support of himself and family, any time before his conviction ; but, if they be collusively parted with, merely to defraud the King, the law will recover them ; for as the offender, if acquitted, might recover them himself, so may the King, if the offender is convicted.

Between the commission of the crime and the conviction of the criminal, the sheriff or other officer may seize the offender's goods upon indictment, so far as to inventory and appraise them, but shall leave them in the offender's custody, that the party accused and his family, may have sufficient of them for their livelihood and maintenance ; for no sheriff, or other person, shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before he be convicted or attainted, or before the goods be otherwise forfeited, on pain of double value to the party aggrieved.

2. Another consequence of attainder is corruption of blood, both in ascent and descent ; what this corruption of blood is, and how it operates, has been fully shewn. But it must be observed, that in tenures, indisputably Saxon, or gavel-kind, tho' land is forfeited to the King, yet no corruption of blood, no impediment of descent ensues ; and, on judgment of mere felony no escheat accrues to the lord. In certain treasons respecting the

the papal supremacy, and the coin, and in many of the newly-created fiefdoms, the particular acts respecting them, enact, That corruption of blood shall be saved.

X. Let us next see how judgment, with its consequences, *viz.*, attainder, forfeiture, and corruption of blood, may be set aside. Now, this may be brought about two ways: 1. By reversing the judgment; and, 2. By reprieve, or pardon.

By reversing the judgment, this may be done by a writ of error, which lies from all inferior criminal courts to the court of King's Bench, and may be brought for palpable errors in the judgment or other parts of the record, such as where a man is found guilty of perjury, and receives the sentence of felony; but less errors are sufficient to reverse a judgment, such as, any irregularity, omission, or want of form, in the procees of outlawry or proclamations: but the more effectual method of a reversing judgment is by act of parliament, where it can be procured.

Judgment, however, may be reversed or falsified without a writ of error or an act of parliament, for matters foreign to, or not apparent upon, the face of the record; as, in both civil or criminal cases, where the whole record be not certified, or not truly certified by the inferior court. If a judgment be given, that is sentence passed, by a person not properly commissioned, it may be falsified, or made void, by shewing the special matter, without writ of error. As I observed once before, if a commission issues to twelve persons, to try indictments, of which *A* or *B* shall be one, and any other of the twelve proceed to trial, without *A* or *B*, all the proceedings in such trial, &c. would be void; and should a man, by such trial, be condemned and executed, it would be little short of murder in the judge that tried and sentenced him.

Reversing an outlawry puts the party exactly in the same situation as he would have been in, had he appeared upon the warrant issued to bring him into court; for all other proceedings, except the procees of outlawry for his non-appearance, remain good and effectual as before. But when judgment is reversed, all former proceedings are set aside, and the party stands as if he had never been accused; and though, upon his attainder, the crown may have granted away his estates, yet the owner may enter upon the grantee or possessor, with as little ceremony as he might enter upon a dispossessor, or one who puts him out of possession, but he still remains liable to another prosecution for the same crime; for, the past prosecution being erroneous, he never was in jeopardy thereby.

XI. Reprieve or pardon are the other modes of avoiding execution.

1. Reprieve is the withdrawing of a sentence for a certain space of time, a suspension only of execution. It is in the breast of a judge to reprieve a convict, either before or after sentence; provided he is either not satisfied with the verdict, thinks the evidence insufficient, or is doubtful whether the offence be felony without benefit of clergy; or to give time to apply to the King for pardon, where favourable circumstances appear on behalf of the criminal. Judges usually reprieve in these cases, though their session be finished and their commission expired.

Women, capitally convicted, if they appear to be quick with child, are generally reprieved for the sake of the infant, till after their delivery: but when they plead themselves pregnant, a jury of twelve discreet women are directed by the judge to examine into the fact; and if they bring in their verdict, quick with child, that is, report that the child is alive within her, execution is delayed from session to session, till she is delivered, or proved by the course of nature, not to have been with child at all.

If the offender, after sentence, becomes insane, it is a regular cause of reprieve, as the law knows not, but, if in his reason, he might have offered some reasons to stay execution. It is an inviolable rule, therefore, if any length of time intervenes between the judgment and the award of execution, to ask the prisoner what he hath to alledge why execution should not be awarded against him, and if he appears to be insane, the judge may, and ought to reprieve him. Should the party plead, in bar of execution, that he is not the same person that was attainted, or against whom sentence was passed; a jury is immediately impanelled to examine into the identity of his person, and no time is allowed the prisoner to make his defence or produce witnesses, that he is not the person attainted; and in this jury no peremptory challenges are allowed him.

2. But, the last and surest resort is the King's pardon. Now the King has power to pardon all offences merely against the crown or the public, except a *præmunire* incurred by committing any man to prison out of the realm. In appeals, which are at the suit of the party injured, the King cannot indeed pardon but the prosecutor may release. Neither can he pardon a nuisance, while it continues, though he may afterwards remit the fine; nor an offence against a penal statute, after information lodged; for the informer, thereby hath acquired a property in his part of the penalty. And no pardon under the great seal of England shall be *pleadable* to an impeachment by the Common

Commons in parliament; as such pardons would defeat the effect of impeachment; but after the impeachment has been heard and determined, the King is at liberty to pardon the offender.

Pardons must be issued under the great seal. Any suppression of truth, or suggestion of falsehood in a charter of pardon, will destroy it: for the King is supposed, in such case, to be misinformed. It is a general rule, however, that pardons shall be construed most beneficially for the subject, and most strongly against the King.

Pardons may also be conditional; for example, on being confined to hard labour for a certain time, or on being transported for life or a term of years. Pardons, by act of parliament, are more beneficial than those under the great seal, as a man is not bound to plead such pardon, the court must take notice of it *ex officio*; nor can a man lose the benefit of such a pardon by negligence as he may of the King's pardon; for he must plead the King's at a proper time, or it loses its effect. The judges have a discretionary power to bind a criminal, pleading the King's pardon, to his good behaviour, with two sureties, for any term not exceeding seven years.

Though the King's pardon, granted after attainder, will not restore or purify blood corrupted by such attainder; yet it acquits the criminal of all corporal penalties and forfeitures annexed to the crime for which he obtains the pardon, and gives him a new credit and capacity: it enables him to transmit new inheritable blood; and should he, after the pardon, have a son, that son may be heir to his father, which he could not have been, had he been born before the pardon.

XII. Execution is the completion of human punishments, and in all cases must be performed by the sheriff or his deputy, who acts by the authority of the judge signing the calendar or list of all the prisoners' names, with the respective judgments in the margin; for example, in capital felonies, it is written opposite the felon's name, "Let him be hanged by the neck;" which is the only warrant the sheriff has. But for the execution of a peer, tried by the court of parliament, a writ or warrant is issued by the King; if tried in the court of the Lord High Steward, the warrant is issued by the judge of that court.

Upon the receipt of the warrant, the sheriff is to execute the criminal, within a convenient time; which, in the country, is left at large; but in London there is more solemnity, both in the warrant of execution and the time of performing it; for the recorder, after reporting to the King, in person, the case of the several prisoners, and receiving his royal pleasure, that the law must

must take its course, issues his warrant to the sheriff, appointing the day of execution, and the place assigned; and, if the prisoner be tried at the bar of the court of King's Bench, or brought there by *Habeas Corpus*, a rule is made for his execution, specifying the time and place, or leaving it to the sheriff; and throughout the kingdom, it is enacted, that in the case of a murder, the Judge shall, in his sentence, direct the execution to be performed, on the next day but one after the sentence, except that day be Sunday, and then on the Monday following.

I have had occasion to observe before, that it would be felony in a sheriff to alter the manner of execution, by substituting one kind of death for another. The King cannot even change the punishment. And it is clear, that if, upon judgment to be hanged by the neck till he is dead, the criminal be not thoroughly put to death, but revives, the sheriff is bound to hang him again; for, if a false tenderness were to be indulged in such cases, there might be no end to the collusion.

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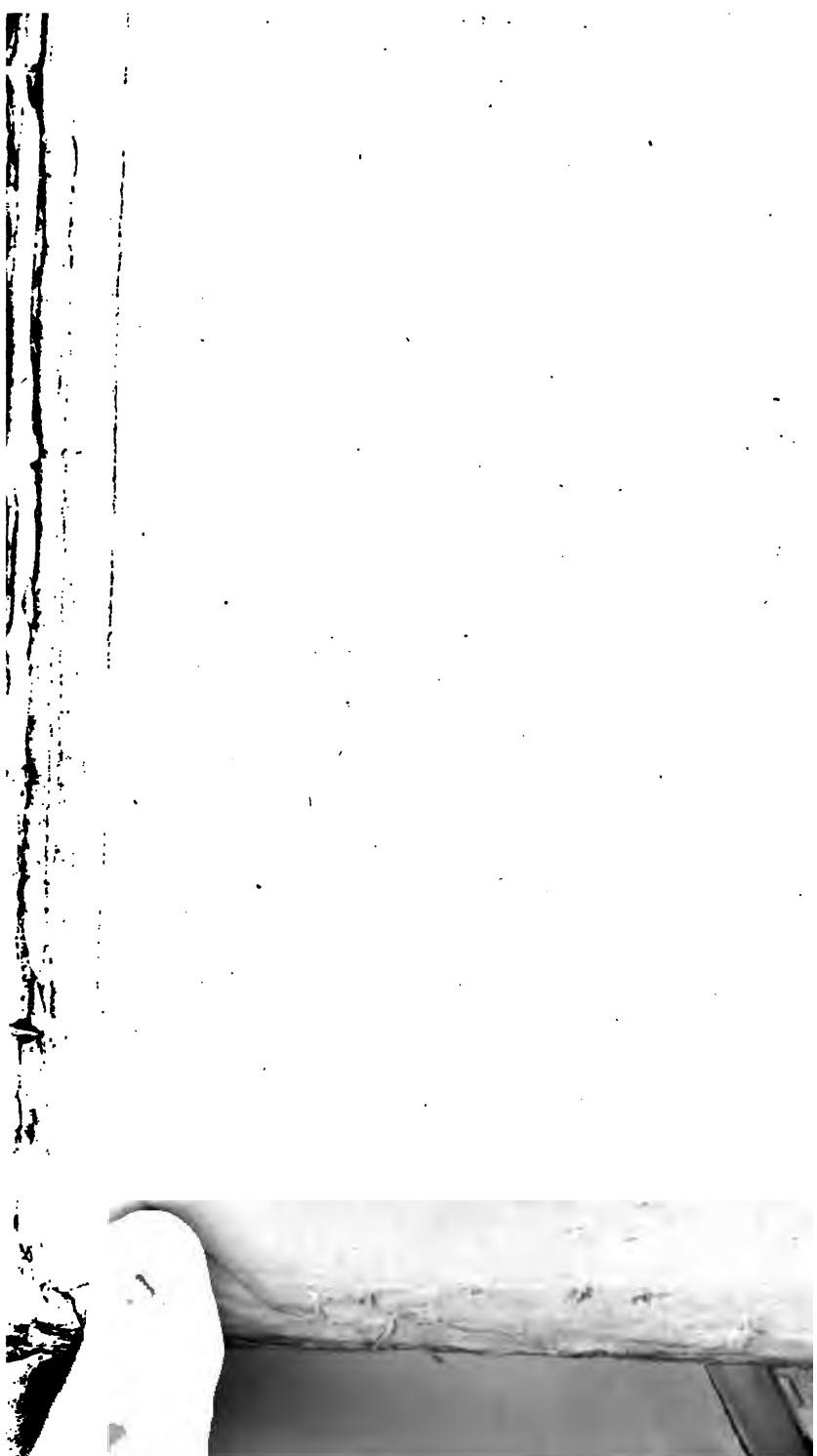
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F I N I S.

PUBLISHED BY W. T. CLARK

192, STRAND.

—
1815.



shall be exhibited, at the theatres; such as would corrupt the morals of mankind; it is wisely ordained, by government, that every piece shall first undergo an examination; and nothing be performed, but what is approved of, and licensed.

STAGE-PLAYERS.



PLAYS generally performed, are such as tend to ridicule the follies, and expose the vices, of the age. Comedies, are lively pieces, that cause laughter; and tragedies, serious stories, that excite tears, and compassion; and the subject matter is, generally, some piece of history, or some scenes in real life, displaying the manners and the customs of the people. Farces are, generally, ludicrous scenes in life, heightening in the representation.

There are so few good players, so few, close imitators of nature, that, where a player has uncommon talents, or a singer, an uncommon fine voice, they are paid, from 500. to a 1000. pounds, a year, or more.

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The scenery, by mechanism, and fine painting, is now brought to such a degree of perfection, that a spectator may readily conceive himself, at the foot of large mountains, and, on the banks of spacious rivers, all within the small compass of a few square yards; and, the mind shall thus be carried to the remotest parts of the world, by the shifting of a scene, or the dropping of a curtain.

DANCING.



WHOEVER has taken notice of the difference; between the awkward gait of the country clown, and the elegant manners of the man of fashion, will be thoroughly sensible of the advantages acquired, by learning to dance. As the mind of young folks is like blank paper, on which we may write any character we chuse; so is their frame and bodies susceptible of almost any impression, we please to make on them.

A certain motion of the body, a particular step, a turn of the wrist, or bend of the head, shall give an almost inconceivable elegance to the form, and distinguish those who have received this education, from those who are unfashioned and untaught.

We may see this, visibly, in disciplined soldiers; take a clod-hopper, from the plough, who stumbles, as he walks, and, whose limbs seem so unhinged, as scarcely to belong to him: make a soldier of him; put him under discipline, or instruction, for three months, and you will not know him again. He will lose all his rustic awkwardness, hold himself up, walk firm on his feet, and, be twice the man he was. From being accustomed to stoop, he will stand erect; and be, in his appearance, two inches taller, than he was, three months before. Take notice, of a mob of undisciplined men, and compare them with a regiment of soldiers, and there will be no occasion to point out the difference. See also the manifold difference, between the children of the wealthy, and, those of the poor.

So it is with people, in common; the pride, of some young folks, will induce them to imitate the manners of those, who have been well taught, and, make it unnecessary for them, to learn. But, in general, boys and girls are so careless of themselves, and, so indifferent about the appearance they make, that, learning to dance, is a necessary part of their education. See how graceful the young lady, dancing, in the plate before us, appears, to what the others do. She moves, with ease, and elegance; whilst the others, turn in their toes. An awkward stiffness is visible in the man; and, the handsome girl, behind, is disfigured, by a poke of her head, and, an uncouth carriage of her person.

It is a pity, but that young people were more sensible of this; for, if they omit to learn this fashionable

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1816.

accomplishment, whilst young, they will repent, when grown up: it will, then, be too late to learn; the body and limbs, will then have acquired a habit, they cannot alter; and, they will never go into good company, but their own unfashionable manner will put them to the blush. Unhappy at not appearing, as others do, they will labour to imitate them; and, the pains they take, in so doing, serve only to make them more ridiculous, as is evident in the man here dancing.

All persons are ambitious of being thought to keep good company. They should, as early as possible, then, strive to get rid of awkward habits, and imitate the manners of the better class of people. When we see a man well bred, and polite, we know he has been well educated, suppose him to keep the best company, and, are ambitious of his acquaintance: but if, on the contrary, we find him ill bred, and clownish, we know, he has been ill brought up, and suppose him to herd with the lower class of people: and, as we naturally judge of a man, by the company he keeps, we are afraid, and ashamed, to be seen with him, lest we should be thought, as vulgar as him.

As there is nothing takes with mankind, more than elegance of figure, and softness of manners, dancing is one of the first accomplishments we should acquire. It will give us courage, through life, and relieve us from that bashfulness, that is too often the bane of our good fortune.

I will take this opportunity, to mention the tricks, and habits, which young people are apt to learn; and which, when once learned, they, seldom get rid of, through life. It is rather foreign to the subject of dancing; but, tending to render us inelegant, deserves our notice, under this head. By tricks and habits, I mean, biting the nails, pulling the lips, grinding the teeth, screwing up the mouth, lolling out the

TENTH EDITION.

AN

EXPOSITION

OF THE

CAUSES AND CHARACTER

OF THE

Late War with Great Britain.

PUBLISHED BY

AUTHORITY OF THE AMERICAN GOVERNMENT.

"This document is official; and comes, I dare say, from the pen of Mr. Madison himself, or from that of Mr. Monroe. It has been published in *all* the American newspapers that I have seen; and I perceive from advertisements, that it has been published in a *pamphlet* form in every part of America, to the amount, perhaps, of a million of copies." * * * * "The document is all *pith*; all *home blows*. It, therefore, should be answered. I hereby offer my paper as the vehicle of an answer, if any one will send it me."—*Cobbett's Political Register of Saturday, Aug. 12.*

WASHINGTON PRINTED.

LONDON:

REPRINTED AND PUBLISHED BY W. I. CLEMENT,

ADVERTISEMENT.

THE following interesting and important *Exposition* was drawn up by the American Government, as an *appeal* to the people, in order to point out the necessity of such mighty and efficient preparations, for the campaign of 1815, as would assure its successful termination, by the expulsion of the British from every part of the American continent ! The proposal, by the secretary of war, for raising 100,000 men, was part of this plan of vigorous measures ; but the arrival of the advices of peace having been concluded, put a stop to these proceedings, and to the publication of the *appeal*. Since then, however, this document has been printed in America, where it has been widely circulated, to the extent, it is supposed, of a million of copies. It is believed to be the production of Mr. MADISON or Mr. MONROE ; but whoever was the writer, it is highly creditable to his talents as a politician, and seems to call for an answer from some able pen, on behalf of the British Government.

LONDON, 26th August, 1815.

et quod a secessione hanc conseruit, quoniam est illa
secessio non nisi per voluntatem suam, sed per
adversitatem, et hoc est aduersitatem, quae non
debet esse, sed quae est. Quia ergo non sicut
quod dicitur in scriptura nostra patrum, sed sicut de
scriptum est in libro prophetarum, quod de exodus
eis de terra egypti, et quod conseruit eis Iacob unus
prophetus, et quod illi de tempore egypti post
exodus non dicit, sed de tempore egypti, et de
tempore egypti, non dicit, sed de tempore egypti
post exodus. Sed secundum illi de tempore egypti
non dicit, sed de tempore egypti post exodus.
Autem illi de tempore egypti post exodus
non dicit, sed de tempore egypti post exodus.
Et secundum illi de tempore egypti post exodus
non dicit, sed de tempore egypti post exodus.
Et secundum illi de tempore egypti post exodus
non dicit, sed de tempore egypti post exodus.
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Et secundum illi de tempore egypti post exodus
non dicit, sed de tempore egypti post exodus.

AN EXPOSITION,

&c.

W^HATEVER may be the termination of the negotiations at Ghent, the dispatches of the American commissioners, which have been communicated by the president of the United States to the congress, during the present session, will distinctly unfold, to the impartial of all nations, the objects and the dispositions of the parties to the present war.

The United States, relieved by the general pacification of the treaty of Paris, from the danger of actual sufferance, under the evils which had compelled them to resort to arms, have avowed their readiness to resume the relations of peace and amity with Great Britain, upon the simple and single condition of preserving their territory and their sovereignty entire and unimpaired. Their desire of peace, indeed, "upon terms of reciprocity, consistent with the rights of both parties, as sovereign and independent nations*", has not, at any time, been influenced by the provocations of an unprecedented course of hostilities; by the incitements of a successful campaign; or by the agitations which have seemed again to threaten the tranquillity of Europe.

But the British government, after "a discussion with the government of America, for the conciliatory adjustment of the differences subsisting between the two states,

* See Mr. Monroe's letter to Lord Castlereagh, dated January, 1814.

with an earnest desire, on their part, (as it was alleged) to bring them to a favourable issue, upon principles of a perfect reciprocity, not inconsistent with the established maxims of public law, and with the maritime rights of the British empire*; and after "expressly disclaiming any intention to acquire an increase of territory†," have peremptorily demanded, as the price of peace, concessions calculated merely for their own aggrandizement, and for the humiliation of their adversary. At one time they proposed, as their *sine qua non*, a stipulation, that the Indians, inhabiting the country of the United States, within the limits established by the treaty of 1783, should be included as the allies of Great Britain (a party to that treaty) in the projected pacification; and that definite boundaries should be settled for the Indian territory, upon a basis which would have operated to surrender to a number of Indians, not, probably, exceeding a few thousands, the rights of sovereignty, as well as of soil, over nearly one third of the territorial dominions of the United States, inhabited by more than one hundred thousand of its citizens‡. And, more recently, (withdrawing in effect that proposition,) they have offered to treat on the basis of the *uti possidetis*; when, by the operations of the war, they had

* See Lord Castlereagh's letter to Mr. Monroe, dated the 4th of November, 1813.

† See the American dispatch, dated the 12th of August, 1814.

‡ See the American dispatches, dated the 12th and 19th of August, 1814; the note of the British commissioners, dated the 19th of August, 1814; the note of the American commissioners, dated the 21st of August, 1814; the note of the British commissioners, dated the 4th of September, 1814; the note of the American commissioners of the 9th of Sept. 1814; the note of the British commissioners, dated the 19th of Sept. 1814; the note of the American commissioners, dated the 26th of Sept. 1814; the note of the British commissioners, dated the 8th of Oct. 1814; and the note of the American commissioners, of the 13th of Oct. 1814.

obtained the military possession of an important part of the state of Massachusetts, which it was known could never be the subject of a cession, consistently with the honour and faith of the American government *. Thus it is obvious, that Great Britain, neither regarding "the principles of a perfect reciprocity," nor the rule of her own practice and professions, has indulged pretensions, which could be heard only in order to be rejected. The alternative, either vindictively to protract the war, or honourably to end it, has been fairly given to her option; but she wants the magnanimity to decide, while her apprehensions are awakened for the result of the congress at Vienna, and her hopes are flattered by schemes of conquest in America.

There are periods in the transactions of every country, as well as in the life of every individual, when self-examination becomes a duty of the highest moral obligation; when the government of a free people, driven from the path of peace, and baffled in every effort to regain it, may resort for consolation to the conscious rectitude of its measures; and when an appeal to mankind, founded upon truth and justice, cannot fail to engage those sympathies, by which even nations are led to participate in the fame and fortunes of each other.—The United States, under these impressions, are neither insensible to the advantages nor to the duties of their peculiar situation. They have but recently, as it were, established their independence; and the volume of their national history lies open, at a glance, to every eye. The policy of their government, therefore, whatever it has been in their

* See the note of the British commissioners, dated the 21st of Oct. 1814; the note of the American commissioners, dated the 24th of Oct. 1814; and the note of the British commissioners, dated the 31st of Oct. 1814.

foreign, as well as in their domestic relations, it is impossible to conceal, and it must be difficult to mistake. If the assertion, that it has been a policy to preserve peace and amity with all the nations of the world, be doubted, the proofs are at hand. If the assertion, that it has been a policy to maintain the rights of the United States, but at the same time to respect the rights of every other nation, be doubted, the proofs will be exhibited. If the assertion, that it has been a policy to act impartially towards the belligerent powers of Europe, be doubted, the proofs will be found on record, even in the archives of England and of France. And if, in fine, the assertion, that it has been a policy, by all honourable means, to cultivate with Great Britain those sentiments of mutual good will, which naturally belong to nations connected by the ties of a common ancestry, an identity of language, and a similarity of manners, be doubted, the proofs will be found in that patient forbearance, under the pressure of accumulating wrongs, which marks the period of almost thirty years, that elapsed between the peace of 1783 and the rupture of 1812.

The United States had just recovered, under the auspices of their present constitution, from the debility which their revolutionary struggle had produced, when the convulsive movements of France excited throughout the civilized world the mingled sensations of hope and fear—of admiration and alarm. The interest which those movements would, in themselves, have excited, was incalculably increased, however, as soon as Great Britain became a party to the first memorable coalition against France, and assumed the character of a belligerent power; for, it was obvious, that the distance of the scene would no longer exempt the United States from the influence and the evils of the European conflict. On the one

hand, their government was connected with France by treaties of alliance and commerce; and the services which that nation had rendered to the cause of American independence, had made such impressions upon the public mind, as no virtuous statesman could rigidly condemn, and the most rigorous statesman would have sought in vain to efface. On the other hand, Great Britain, leaving the treaty of 1783 unexecuted, forcibly retained the American posts upon the northern frontier; and, slighting every overture to place the diplomatic and commercial relations of the two countries upon a fair and friendly foundation*, seemed to contemplate the success of the American revolution in a spirit of unextinguishable animosity. Her voice had indeed been heard from Quebec and Montreal, instigating the savages to war†. Her invisible arm was felt in the defeats of General Harmier‡ and General St. Clair||, and even the victory of General Wayne§ was achieved in the presence of a fort which she had erected, far within the territorial boundaries of the United States, to stimulate and countenance the barbarities of the Indian warrior¶. Yet the American government, neither yielding to popular feeling, nor acting upon the impulse of national resentment, hastened to adopt the policy of a strict and steady neutrality; and solemnly announced that policy to the citizens at home, and to the nations abroad, by the proclamation of the 22d of April, 1793.—Whatever may have been the trials of its pride,

* See Mr. Adam's correspondence.

† See the speeches of Lord Dorchester.

‡ On the waters of the Miami of the lake, on the 21st of October, 1790.

|| At Fort Recovery, on the 4th of November, 1791.

§ On the Miami of the lakes, in August, 1794.

¶ See the correspondence between Mr. Randolph, the American secretary of state, and Mr. Hammond, the British plenipotentiary, dated May and June, 1794.

cause for reproach. The citizens of the United States had openly engaged in an extensive trade with the French islands in the West Indies, ignorant of the alleged existence of the rule of the war of 1756, or unapprised of any intention to call it into action, when the order of the 6th of November, 1793, was silently circulated among the British cruizers, consigning to legal adjudication "all vessels loaden with goods, the produce of any colony of France, or carrying provisions or supplies for the use of any such colony *." A great portion of the commerce of the United States was thus annihilated at a blow; the amicable dispositions of the government were again disregarded and contemned; the sensibility of the nation was excited to a high degree of resentment, by the apparent treachery of the British order; and a recourse to reprisals, or to war, for indemnity and redress, seemed to be unavoidable. But the love of justice had established, the law of neutrality; and the love of peace taught a lesson of forbearance. The American government, therefore, rising superior to the provocations and the passions of the day, instituted a special mission, to represent at the court of London the injuries and the indignities which it had suffered; "to vindicate its rights with firmness, and to cultivate peace with sincerity †." The immediate result of this mission, was a treaty of amity, commerce, and navigation, between the United States and Great Britain, which was signed by the negociators on the 19th of November, 1794, and finally ratified, with the consent of the senate, in the year 1795: but both the mission and its result, serve, also, to display the independence and the impartiality of the American

* See the British order of the 6th of November, 1793.

† See the president's message to the senate, of the 16th of April, 1794, nominating Mr. Jay as envoy extraordinary to his Britannic majesty.

government, in asserting its rights and performing its duties, equally unawed and unbiassed by the instruments of belligerent power, or persuasion.

On the foundation of this treaty the United States, in a pure spirit of good faith and confidence, raised the hope and the expectation, that the maritime usurpations of Great Britain would cease to annoy them; that all doubtful claims of jurisdiction would be suspended; and that even the exercise of an incontestible right would be so modified, as to present neither insult, nor outrage, nor inconvenience, to their flag, or to their commerce. But the hope and the expectation of the United States have been fatally disappointed. Some relaxation in the rigour, without any alteration in the principle, of the order in council of the 6th of November, 1793, was introduced by the subsequent orders of the 8th of January, 1794, and the 25th of January, 1798: but from the ratification of the treaty of 1794, until the short respite afforded by the treaty of Amiens, in 1802, the commerce of the United States continued to be the prey of British cruizers and privateers, under the adjudicating patronage of the British tribunals. Another grievance, however, assumed at this epoch, a form and magnitude, which cast a shade over the social happiness, as well as the political independence of the nation. The merchant vessels of the United States were arrested on the high seas, while in the prosecution of distant voyages; considerable numbers of their crews were impressed into the naval service of Great Britain; the commercial adventures of the owners were often, consequently, defeated; and the loss of property, the embarrassments of trade and navigation, and the scene of domestic affliction, became intolerable: This grievance (which constitutes an important surviving cause of the American declaration of war) was early, and

has been incessantly urged upon the attention of the British government. Even in the year 1792, they were told of "the irritation that it had excited; and of the difficulty of avoiding to make immediate reprisals on their seamen in the United States*." They were told "that so many instances of the kind had happened, that it was quite necessary that they should explain themselves on the subject, and be led to disavow and punish such violence, which had never been experienced from any other nation†." And they were told "of the inconvenience of such conduct, and of the impossibility of letting it go on, so that the British ministry should be made sensible of the necessity of punishing the past, and preventing the future ‡." But after the treaty of amity, commerce, and navigation, had been ratified, the nature and the extent of the grievance became still more manifest; and it was clearly and firmly presented to the view of the British government, as leading unavoidably to discord and war between the two nations. They were told "that unless they would come to some accommodation which might ensure the American seamen against this oppression, measures would be taken to cause the inconvenience to be equally felt on both sides §." They were told "that the impressment of American citizens, to serve on board of British armed vessels, was not only an injury to the unfortunate individuals, but it naturally excited certain emotions in the breasts of the nation to whom they belong, and of the just and humane of every

* See the letter of Mr. Jefferson, secretary of state, to Mr. Pinkney, minister at London, dated 11th of June, 1792.

† See the letter, from the same to the same, dated the 12th of October, 1792.

‡ See the letter, from the same to the same, dated the 6th of Nov. 1792.

§ See the letter from Mr. Pinkney, minister at London, to the secretary of state, dated 13th March, 1793.

country; and that an expectation was indulged that orders would be given, that the Americans so circumstanced should be immediately liberated, and that the British officers should, in future, abstain from similar violences *." They were told " that the subject was of much greater importance than had been supposed ; and that, instead of a few, and those in many instances equivocal cases, the American minister at the court of London had, in nine months (part of the years 1796 and 1797) made applications for the discharge of two hundred and seventy-one seamen, who had, in most cases, exhibited such evidence, as to satisfy him that they were real Americans, forced into the British service, and persevering, generally, in refusing pay and bounty †." They were told " that if the British government had any regard to the rights of the United States, any respect for the nation, and placed any value on their friendship, it would facilitate the means of relieving their oppressed citizens ‡." They were told " that the British naval officers often impressed Swedes, Danes, and other foreigners, from the vessels of the United States; that they might, with as much reason, rob American vessels of the property or merchandize of Swedes, Danes, and Portuguese, as seize and detain in their service the subjects of those nations found on board of American vessels; and that the president was extremely anxious to have this business of impressing placed on a reasonable footing §." And they were told, " that the impressment of American

* See the note of Mr. Jay, envoy extraordinary, to Lord Grenville, dated the 30th of July, 1794.

† See the letter of Mr. King, minister at London, to the secretary of state, dated the 13th of April, 1797.

‡ See the letter from Mr. Pickering, secretary of state, to Mr. King, minister at London, dated the 10th of September, 1796.

§ See the letter, from the same to the same, dated the 26th of October, 1796.

seamen was an injury of very serious magnitude, which deeply affected the feelings and honour of the nation; that no right had been asserted to impress the natives of America; yet, that they were impressed; they were dragged on board British ships of war, with the evidence of citizenship in their hands, and forced by violence there to serve, until conclusive testimonials of their birth could be obtained; that many must perish unrelieved, and all were detained a considerable time in lawless and injurious confinement; that the continuance of the practice must inevitably produce discord between two nations, which ought to be the friends of each other; and that it was more advisable to desist from, and to take effectual measures to prevent, an acknowledged wrong, than by perseverance in that wrong, to excite against themselves the well-founded resentment of America, and force the government into measures, which may very possibly terminate in an open rupture *."

Such were the feelings and the sentiments of the American government, under every change of its administration, in relation to the British practice of impressment; and such the remonstrances addressed to the justice of Great Britain. It is obvious, therefore, that this cause, independent of every other, has been uniformly deemed a just and certain cause of war; yet, the characteristic policy of the United States still prevailed: remonstrance was only succeeded by negociation; and every assertion of American rights, was accompanied with an overture, to secure, in any practicable form, the rights of Great Britain †. Time, seemed, however, to

* See the letter from Mr. Marshal, secretary of state, (now chief justice of the United States,) to Mr. King, minister at London, dated the 20th of September, 1800.

† See particularly Mr. King's propositions to Lord Grenville, and Lord Hawkesbury, of the 13th April, 1797, the 15th of March, 1799, of the 52th February, 1801, and in July, 1813.

render it more and more difficult to ascertain and fix the standard of the British rights, according to the succession of the British claims. The right of entering and searching an American merchant ship, for the purpose of impressment, was, for a while, confined to the case of British deserters; and even so late as the month of February, 1800, the minister of his Britannic majesty, then at Philadelphia, urged the American government, "to take into consideration, as the only means of drying up every source of complaint and irritation, upon that head, a proposal which he had made two years before, in the name of his majesty's government, for the reciprocal restitution of deserters *." But this project of a treaty was then deemed inadmissible, by the president of the United States, and the chief officers of the executive departments of the government, whom he consulted, for the same reason, specifically, which, at a subsequent period, induced the president of the United States, to withhold his approbation from the treaty negotiated by the American ministers at London, in the year 1806; namely, "that it did not sufficiently provide against the impressment of American seamen †;" and that it is better to have no article and to meet the consequences, than not to enumerate merchant vessels on the high seas, among the things not to be forcibly entered in search of deserters ‡." But the British claim, expanding with singular elasticity, was soon found to include a right to enter American vessels

* See Mr. Liston's note to Mr. Pickering, the secretary of state, dated the 4th of February, 1800.

† See the opinion of Mr. Pickering, secretary of state, enclosing the plan of a treaty, dated the 3d of May, 1800, and the opinion of Mr. Wolcott, secretary of the treasury, dated the 14th of April, 1800.

‡ See the opinion of Mr. Stoddert, secretary of the navy, dated the 23d of April, 1800, and the opinions of Mr. Lee, attorney general, dated the 26th of February, and the 30th of April, 1800.

on the high seas, in order to search for and seize all British seamen; it next embraced the case of every British subject; and finally, in its practical enforcement, it has been extended to every mariner, who could not prove, upon the spot, that he was a citizen of the United States.

While the nature of the British claim was thus ambiguous and fluctuating, the principle to which it was referred, for justification and support, appeared to be at once arbitrary and illusory. It was not recorded in any positive code of the law of nations; it was not displayed in the elementary works of the civilian; nor had it ever been exemplified in the maritime usages of any other country, in any other age. In truth, it was the offspring of the municipal law of Great Britain alone; equally operative in a time of peace, and in a time of war; and, under all circumstances, inflicting a coercive jurisdiction upon the commerce and navigation of the world.

For the legitimate rights of the belligerent powers, the United States had felt and evinced a sincere and open respect. Although they had marked a diversity of doctrine among the most celebrated jurists, upon many of the litigated points of the law of war; although they had formerly espoused, with the example of the most powerful government of Europe, the principles of the armed neutrality, which were established in the year 1780, upon the basis of the memorable declaration of the Empress of all the Russias; and although the principles of that declaration have been incorporated into all their public treaties, except in the instance of the treaty of 1794: yet, the United States, still faithful to the pacific and impartial policy which they professed, did not hesitate, even at the commencement of the French revo-

lutionary war, to accept and allow the exposition of the law of nations, as it was then maintained by Great Britain; and, consequently, to admit, upon a much contested point, that the property of her enemy, in their vessels, might be lawfully captured as prize of war*. It was, also, freely admitted, that a belligerent power had a right, with proper cautions, to enter and search American vessels, for the goods of an enemy, and for articles contraband of war; that, if upon a search such goods or articles were found, or if, in the course of the search, persons in the military service of the enemy were discovered, a belligerent had a right of transhipment and removal; that a belligerent had a right, in doubtful cases, to carry American vessels to a convenient station, for further examination; and that a belligerent had a right to exclude American vessels from ports and places, under the blockade of an adequate naval force.—These rights the law of nations might, reasonably, be deemed to sanction; nor has a fair exercise of the powers necessary for the enjoyment of these rights, been at any time controverted, or opposed, by the American government.

But, it must be again remarked, that the claim of Great Britain was not to be satisfied by the most ample and explicit recognition of the law of war; for, the law of war treats only of the relations of a belligerent to his enemy, while the claim of Great Britain embraced, also, the relations between a sovereign and his subjects. It was said, that every British subject was bound by a tie of allegiance to his sovereign, which no lapse of time,

* See the correspondence of the year 1792, between Mr. Jefferson, secretary of state, and the ministers of Great Britain and France. See also, Mr. Jefferson's letter to the American minister at Paris, of the same year, requesting the recall of Mr. Genet.

no change of place, no exigency of life, could possibly weaken, or dissolve. It was said, that the British sovereign was entitled, at all periods, and on all occasions, to the services of his subjects. And it was said, that the British vessels of war upon the high seas, might lawfully and forcibly enter the merchant vessels of every other nation (for the theory of these pretensions is not limited to the case of the United States, although that case has been, almost exclusively, affected by their practical operation) for the purpose of discovering and impressing British subjects*. The United States presume not to discuss the forms, or the principles, of the governments established in other countries. Enjoying the right and the blessing of self-government, they leave, implicitly, to every foreign nation, the choice of its social and political institutions. But, whatever may be the form, or the principle, of government, it is an universal axiom of public law, among sovereign and independent states, that every nation is bound so to use and enjoy its own rights, as not to injure, or destroy, the rights of any other nation. Say then, that the tie of allegiance cannot be severed, or relaxed, as respects the sovereign and the subject; and say, that the sovereign is, at all times, entitled to the services of the subject; still, there is nothing gained in support of the British claim, unless it can, also, be said, that the British sovereign has a right to seek and seize his subject, while actually within the dominion, or under the special protection, of another sovereign state. This will not, surely, be denominated a process of the law of nations, for the purpose of enforcing the rights of war; and if it shall be tolerated as a process of the municipal law of Great

* See the British declaration of the 10th of January, 1813.

Britain, for the purpose of enforcing the right of the sovereign to the service of his subjects, there is no principle of discrimination, which can prevent its being employed in peace, or in war, with all the attendant abuses of force and fraud, to justify the seizure of British subjects for crimes, or for debts; and the seizure of British property, for any cause that shall be arbitrarily assigned. The introduction of these degrading novelties into the maritime code of nations, it has been the arduous task of the American government, in the onset, to oppose; and it rests with all other governments to decide, how far their honour and their interests must be eventually implicated by a tacit acquiescence in the successive usurpations of the British flag. If the right claimed by Great Britain be, indeed, common to all governments, the ocean will exhibit, in addition to its many other perils, a scene of everlasting strife and contention: but what other government has ever claimed or exercised the right? If the right shall be exclusively established as a trophy of the naval superiority of Great Britain, the ocean, which has been sometimes emphatically denominated, "the highway of nations," will be identified, in occupancy and use, with the dominions of the British crown; and every other nation must enjoy the liberty of passage upon the payment of a tribute or the indulgence of a license: but what nation is prepared for this sacrifice of its honour and its interests? And if, after all, the right be now asserted (as experience too plainly indicates) for the purpose of imposing upon the United States, to accommodate the British maritime policy, a new and odious limitation of the sovereignty and independence, which were acquired by the glorious revolution of 1776, it is not for the American government to calculate the dura-

tion of a war that shall be waged in resistance of the active attempts of Great Britain to accomplish her project: for, where is the American citizen, who would tolerate a day's submission to the vassalage of such a condition?

But the American government has seen, with some surprize, the gloss, which the Prince Regent of Great Britain, in his declaration of the 10th of January, 1813, has condescended to bestow upon the British claim of a right to impress men, on board of the merchant vessels of other nations; and the retort which he has ventured to make upon the conduct of the United States relative to the controverted doctrines of expatriation. The American government, like every other civilized government, avows the principle, and indulges the practice, of naturalizing foreigners. In Great Britain, and throughout the continent of Europe, the laws and regulations upon the subject, are not materially dissimilar, when compared with the laws and regulations of the United States. The effect, however, of such naturalization upon the connexion which previously subsisted between the naturalized person and the govetnment of the country of his birth, has been differently considered, at different times, and in different places. Still, there are many cases, in which a diversity of opinion does not exist, and cannot arise. It is agreed, on all hands, that an act of naturalization is not a violation of the law of nations; and that, in particular, it is not in itself an offence against the government whose subject is naturalized. It is agreed, that an act of naturalization creates, between the parties, the reciprocal obligations of allegiance and protection. It is agreed, that while a naturalized citizen continues within the territory and jurisdiction of his adoptive government, he cannot be pur-

sued, or seized, or restrained, by his former sovereign. It is agreed, that a naturalized citizen, whatever may be thought of the claims of the sovereign of his native country, cannot lawfully be withdrawn from the obligations of his contract of naturalization, by the force or the seduction of a third power. And it is agreed, that no sovereign can lawfully interfere, to take from the service, or the employment, of another sovereign, persons who are not the subjects of either of the sovereigns engaged in the transaction. Beyond the principles of these accorded propositions, what have the United States done to justify the imputation of " harbouring British seamen, and of exercising an assumed right, to transfer the allegiance of British subjects*?" The United States have, indeed, insisted upon the right of navigating the ocean in peace and safety, protecting all that is covered by their flag, as on a place of equal and common jurisdiction to all nations; save where the law of war interposes the exceptions of visitation, search, and capture: but, in doing this, they have done no wrong. The United States, in perfect consistency, it is believed, with the practice of all belligerent nations, not even excepting Great Britain herself, have, indeed, announced a determination, since the declaration of hostilities, to afford protection, as well to the naturalized, as to the native citizen, who, giving the strongest proofs of fidelity, should be taken in arms by the enemy: and the British cabinet, well know that this determination could have no influence upon those councils of their sovereign, which preceded and produced the war. It was not, then, to " harbour British seamen," nor " to transfer the allegiance of British subjects;" nor to " cancel the juris-

* See the British declaration of the 10th of January, 1813.

diction of their legitimate sovereign;" nor to vindicate "the pretension that acts of naturalization, and certificates of citizenship, were as valid out of their own territory, as within it*;" that the United States have asserted the honour and the privilege of their flag, by the force of reason and of arms. But it was to resist a systematic scheme of maritime aggrandizement, which, prescribing to every other nation the limits of a territorial boundary, claimed for Great Britain the exclusive dominion of the seas; and which, spurning the settled principles of the law of war, condemned the ships and mariners of the United States, to suffer, upon the high seas, and virtually within the jurisdiction of their flag, the most rigorous dispensations of the British municipal code, inflicted by the coarse and licentious hand of a British press gang.

The injustice of the British claim, and the cruelty of the British practice, have tested, for a series of years, the pride and the patience of the American government; but, still, every experiment was anxiously made, to avoid the last resort of nations. The claim of Great Britain, in its theory, was limited to the right of seeking and impressing its own subjects on board of the merchant vessels of the United States, although, in fatal experience, it has been extended (as already appears) to the seizure of the subjects of every other power sailing under a voluntary contract with the American merchant; to the seizure of the naturalized citizens of the United States, sailing also under voluntary contracts, which every foreigner, independent of any act of naturalization, is at liberty to form in every country; and even to the seizure of the native citizens of the United States, sailing on board the ships

* See these passages in the British declaration of the 10th of January, 1813.

of their own nation, in the prosecution of a lawful commerce. The excuse for what has been unfeelingly termed "partial mistakes and occasional abuse *," when the right of impressment was practised towards vessels of the United States, is, in the words of the Prince Regent's declaration, "a similarity of language and manners;" but was it not known, when this excuse was offered to the world, that the Russian, the Swede, the Dane, and the German, that the Frenchman, the Spaniard, and the Portuguese—nay, that the African and the Asiatic, between whom and the people of Great Britain there exists no similarity of language, manners, or complexion, had been, equally with the American citizen and the British subject, the victims of the impress tyranny †. If, however, the excuse be sincere, if the real object of the impressment be merely to secure to Great Britain the naval services of her own subjects, and not to man her fleets, in every practicable mode of enlistment, by right or by wrong; and if a just and generous government, professing mutual friendship and respect, may be presumed to prefer the accomplishment even of a legitimate purpose, by means the least afflicting and injurious to others, why have the overtures of the United States, offering other means as effectual as impressment, for the purpose avowed, to the consideration and acceptance of Great Britain, been for ever eluded or rejected? It has been offered, that the number of men to be protected by an American vessel should be limited by her tonnage; that British officers should be permitted, in British ports, to enter the vessel, in order to ascertain the number of men on board;

* See the British declaration of the 10th of January, 1813.

† See the letter of Mr. Pickering, secretary of state, to Mr. King, minister at London, of the 26th of October, 1796; and the letter of Mr. Marshall, secretary of state, to Mr. King, of the 20th of September, 1800.

and that, in case of an addition to her crew, the British subjects enlisted should be liable to impressment*. It was offered in the solemn form of a law, that the American seamen should be registered, that they should be provided with certificates of citizenship †, and that the roll of the crew of every vessel should be formally authenticated ‡. It was offered, that no refuge or protection should be given to deserters; but that, on the contrary, they should be surrendered §. It was "again and again offered to concur in a convention, which it was thought practicable to be formed, and which should settle the question of impressment, in a manner that would be safe for England and satisfactory to the United States ||. It was offered, that each party should prohibit its citizens or subjects from clandestinely concealing or carrying away, from the territories or colonies of the other, any seamen belonging to the other party ¶. And, conclusively, it has been offered and declared by law, that "after the termination of the present war, it should not be lawful to employ on board of any of the public or private vessels of the United States, any persons except citizens of the United States; and that no foreigner should be admitted to become a citizen hereafter, who had not, for the continued term of five years, resided

* See the letter of Mr. Jefferson, secretary of state, to Mr. Pinkney, minister at London, dated the 11th of June, 1792; and the letter of Mr. Pickering, secretary of state, to Mr. King, minister at London, dated the 8th of June, 1796.

† See the act of Congress, passed the 28th of May, 1796.

‡ See the letter of Mr. Pickering, secretary of state, to Mr. King, minister at London, dated the 8th of June, 1796.

§ See the project of a treaty on the subject, between Mr. Pickering, secretary of state, and Mr. Liston, the British minister, at Philadelphia, in the year 1800.

|| See the letter of Mr. King, minister at London, to the secretary of state, dated the 15th of March, 1799.

¶ See the letter of Mr. King to the secretary of state, dated in July, 1803.

within the United States, without being, at any time during the five years, out of the territory of the United States *."

It is manifest then, that such provision might be made by law, and that such provision has been repeatedly and urgently proposed, as would, in all future times, exclude from the maritime service of the United States, both in public and in private vessels, every person who could possibly be claimed by Great Britain as a native subject, whether he had or had not been naturalized in America †. Enforced by the same sanctions and securities which are employed to enforce the penal code of Great Britain, as well as the penal code of the United States, the provision would afford the strongest evidence that no British subject could be found in service on board of an American vessel; and, consequently, whatever might be the British right of impressment in the abstract, there would remain no justifiable motive, there could hardly be invented a plausible pretext to exercise it at the expense of the American right of lawful commerce. If, too, as it has sometimes been insinuated, there would nevertheless be room for frauds and evasions, it is sufficient to observe, that the American government would always be ready to hear, and to redress, every just complaint; or, if redress were sought and refused, (a preliminary course that ought never to have been omitted, but which Great Britain has never pursued,) it would still be in the power of the British government to resort to its own force, by acts equivalent to war, for the reparation of its wrongs.—But Great Britain has, unhappily, perceived in the acceptance of the overtures of the American government,

* See the act of Congress, passed on the 3d of March, 1813.

† See the letter of instructions from Mr. Monroe, secretary of state, to the plenipotentiaries for treating of peace with Great Britain, under the mediation of the emperor Alexander, dated the 5th of April, 1813.

consequences injurious to her maritime policy, and therefore withholds it at the expense of her justice. She perceives, perhaps, a loss of the American nursery for her seamen, while she is at peace; a loss of the service of American crews, while she is at war; and a loss of many of those opportunities, which have enabled her to enrich her navy, by the spoils of the American commerce, without exposing her own commerce to the risk of retaliation or reprisals.

Thus were the United States, in a season of reputed peace, involved in the evils of a state of war; and thus was the American flag annoyed by a nation still professing to cherish the sentiments of mutual friendship and respect, which had been recently vouched by the faith of a solemn treaty. But the American government even yet abstained from vindicating its rights, and from avenging its wrongs, by an appeal to arms. It was not an insensibility to those wrongs, nor a dread of British power, nor a subserviency to British interests, that prevailed at that period in the councils of the United States; but, under all trials, the American government abstained from the appeal to arms then, as it has repeatedly since done, in its collisions with France, as well as with Great Britain, from the purest love of peace, while peace could be rendered compatible with the honour and independence of the nation.

During the period which has hitherto been more particularly contemplated (from the declaration of hostilities between Great Britain and France in the year 1792, until the short-lived pacification of the treaty of Amiens in 1802), there were not wanting occasions to test the consistency and the impartiality of the American government, by a comparison of its conduct towards Great Britain with its conduct towards other nations. The

manifestations of the extreme jealousy of the French government, and of the intemperate zeal of its ministers near the United States, were coeval with the proclamation of neutrality; but after the ratification of the treaty of London, the scene of violence, spoliation, and contumely, opened by France upon the United States, became such, as to admit, perhaps, of no parallel, except in the cotemporaneous scenes which were exhibited by the injustice of her great competitor. The American government acted, in both cases, on the same pacific policy, in the same spirit of patience and forbearance; but with the same determination also to assert the honour and independence of the nation. When, therefore, every conciliatory effort had failed, and when two successive missions of peace had been contemptuously repulsed, the American government, in the year 1798, annulled its treaties with France, and waged a maritime war against that nation, for the defence of its citizens and of its commerce passing on the high seas. But as soon as the hope was conceived of a satisfactory change in the dispositions of the French government, the American government hastened to send another mission to France; and a convention, signed in the year 1800, terminated the subsisting differences between the two countries.

Nor were the United States able, during the same period, to avoid a collision with the government of Spain, upon many important and critical questions of boundary and commerce—of Indian warfare, and maritime spoliation. Preserving, however, their system of moderation, in the assertion of their rights, a course of amicable discussion and explanation produced mutual satisfaction; and a treaty of friendship, limits, and navigation, was formed in the year 1795, by which the citizens of the United States acquired a right, for the space of

three years, to deposit their merchandises and effects in the port of New Orleans; with a promise, either that the enjoyment of that right should be indefinitely continued, or that another part of the banks of the Mississippi should be assigned for an equivalent establishment. But when, in the year 1802, the port of New Orleans was abruptly closed against the citizens of the United States, without an assignment of any other equivalent place of deposite, the harmony of the two countries was again most seriously endangered; until the Spanish government, yielding to the remonstrances of the United States, disavowed the act of the intendant of New Orleans, and ordered the right of deposite to be reinstated, on the terms of the treaty of 1795.

The effects produced, even by a temporary suspension of the right of deposite at New Orleans, upon the interests and feelings of the nation, naturally suggested to the American government the expediency of guarding against their recurrence, by the acquisition of a permanent property in the province of Louisiana. The minister of the U. States at Madrid was accordingly instructed to apply to the government of Spain upon the subject; and, on the 4th of May, 1803, he received an answer, stating, that "by the retrocession made to France of Louisiana, that power regained the province, with the limits it had, saving the rights acquired by other powers; and that the United States could address themselves to the French government, to negociate the acquisition of territories which might suit their interest *." But before this reference, official information of the same fact had been received by Mr. Pinkney from the court of Spain, in the month

* See the letter from Don Pedro Cevallos, the minister of Spain, to Mr. C. Pinkney, the minister of the United States, dated the 4th of May, 1803, from which the passage cited is literally translated.

of March preceding; and the American government, having instituted a special mission to negotiate the purchase of Louisiana from France, or from Spain, whichever should be its sovereign; the purchase was accordingly accomplished for a valuable consideration (that was punctually paid) by the treaty concluded at Paris on the 30th of April, 1803.

The American government has not seen, without some sensibility, that a transaction, accompanied by such circumstances of general publicity, and of scrupulous good faith, has been denounced by the Prince Regent in his declaration of the 10th of January, 1813, as a proof of the "ungenerous conduct" of the United States towards Spain*. In amplification of the royal charge, the British negotiators at Ghent have presumed to impute "the acquisition of Louisiana, by the United States, to a spirit of aggrandizement, not necessary to their own security;" and to maintain "that the purchase was made against the known conditions on which it had been ceded by Spain to France †;" that "in the face of the protestation of the minister of his Catholic majesty at Washington, the president of the United States ratified the treaty of purchase ‡;" and that "there was good reason to believe, that many circumstances attending the transaction were industriously concealed §." The American government cannot condescend to retort aspersions so unjust, in language so opprobrious; and peremptorily rejects the pretension of Great Britain to interfere in the business of the United States and Spain; but it owes, nevertheless,

* See the Prince Regent's declaration of the 10th of January, 1813.

† See the note of the British commissioners, dated the 4th of September, 1814.

‡ See the note of the British commissioners, dated the 19th of September, 1814.

§ See the note of the British commissioners, dated the 8th of October, 1814.

and, finally, instructed the Marquis de Casa Yrujo, to present to the American government the declaration of the 15th of May, 1804, acting "by the special order of his sovereign," "that the explanations which the government of France had given to his catholic majesty, concerning the sale of Louisiana to the United States, and the amicable dispositions on the part of the king, his master, towards these states, had determined him to abandon the opposition, which, at a prior period, and with the most substantial motives, he had manifested against the transaction *."

But after this amicable and decisive arrangement of all differences, in relation to the validity of the Louisiana purchase, a question of some embarrassment remained, in relation to the boundaries of the ceded territory. This question, however, the American government always has been, and always will be, willing to discuss, in the most candid manner, and to settle upon the most liberal basis, with the government of Spain. It was not, therefore, a fair topic with which to inflame the prince regent's declaration; or to embellish the diplomatic notes of the British negotiators at Ghent †. The period has arrived, when Spain, relieved from her European labours, may be expected to bestow her attention more effectually upon the state of her colonies; and, acting with the wisdom, justice, and magnanimity, of which she has given frequent examples, she will find no difficulty in meeting the recent advances of the American government, for an honourable adjustment of every point in controversy between the

* See the letter of the Marquis de Casa Yrujo to the American secretary of state, dated the 15th of May, 1804.

† See the prince regent's declaration of the 10th of January, 1813. See the notes of the British commissioners, dated 19th September, and 8th October, 1814.

two countries, without seeking the aid of British mediation, or adopting the animosity of British councils.

But still the United States, feeling a constant interest in the opinion of enlightened and impartial nations, cannot hesitate to embrace the opportunity for representing, in the simplicity of truth, the events, by which they have been led to take possession of a part of the Floridas, notwithstanding the claim of Spain to the sovereignty of the same territory. In the acceptation and understanding of the United States, the cession of Louisiana, embraced the country south of the Mississippi territory, and eastward of the river Mississippi, and extending to the river Perdido; but "their conciliatory views, and their confidence in the justice of their cause, and in the success of a candid discussion and amicable negotiation with a just and friendly power, induced them to acquiesce in the temporary continuance of that territory under the Spanish authority*." When, however, the adjustment of the boundaries of Louisiana, as well as a reasonable indemnification, on account of maritime spoliations, and the suspension of the right of deposit at New Orleans, seemed to be indefinitely postponed, on the part of Spain, by events which the United States had not contributed to produce, and could not control; when a crisis had arrived subversive of the order of things under the Spanish authorities, contravening the views of both parties, and endangering the tranquillity and security of the adjoining territories, by the intrusive establishment of a government independent of Spain, as well as of the United States; and when, at a later period, there was reason to believe, that Great Britain herself designed

* See the proclamation of the president of the United States, authorizing governor Claiborne to take possession of the territory, dated the 27th of October, 1810.

to occupy the Floridas, (and she has, indeed, actually occupied Pensacola, for hostile purposes,) the American government, without departing from its respect for the rights of Spain, and even consulting the honour of that state, unequal as she then was to the task of suppressing the intrusive establishment, was impelled, by the paramount principle of self-preservation, to rescue its own rights from the impending danger. Hence the United States, in the year 1810, proceeding step by step, according to the growing exigencies of the time, took possession of the country, in which the standard of independence had been displayed, excepting such places as were held by a Spanish force. In the year 1811 they authorised their president, by law, provisionally to accept of the possession of East Florida from the local authorities, or to pre-occupy it against the attempt of a foreign power to seize it. In 1813, they obtained the possession of Mobile, the only place then held by a Spanish force in West Florida; with a view to their own immediate security, but without varying the questions depending between them and Spain, in relation to that province. And in the year 1814, the American commander, acting under the sanction of the law of nations, but unauthorised by the orders of his government, drove from Pensacola the British troops, who, in violation of the neutral territory of Spain, (a violation which Spain it is believed must herself resent, and would have resisted, if the opportunity had occurred,) seized and fortified that station, to aid in military operations against the United States. But all these measures of safety and necessity were frankly explained, as they occurred, to the government of Spain, and even to the government of Great Britain, antecedently to the [declaration of war, with the sincerest assurances, that the

possession of the territory thus acquired "should not cease to be a subject of fair and friendly negociation and adjustment*."

The present review of the conduct of the United States towards the belligerent powers of Europe, will be regarded, by every candid mind, as a necessary medium to vindicate their national character from the unmerited imputations of the prince regent's declaration of the 10th January, 1813, and not as a medium, voluntarily assumed, according to the insinuations of that declaration, for the revival of unworthy prejudices, or vindictive passions, in reference to transactions that are past. The treaty of Amiens, which seemed to terminate the war in Europe, seemed also to terminate the neutral sufferings of America; but the hope of repose was, in both respects, delusive and transient. The hostilities which were renewed between Great Britain and France, in the year 1803, were immediately followed by a renewal of the aggressions of the belligerent powers upon the commercial rights and political independence of the United States. There was scarcely, therefore, an interval separating the aggressions of the first war from the aggressions of the second war; and although, in nature, the aggressions continued to be the same in extent, they became incalculably more destructive. It will be seen,

* See the letter from the secretary of state to Governor Claiborne, and the proclamation, dated the 27th of October, 1810.

See the proceedings of the convention of Florida, transmitted to the secretary of state by the governor of the Mississippi territory, in his letter of the 17th of October, 1810; and the answer of the secretary of state, dated the 15th of November, 1810.

See the letter of Mr. Morier, British charge d'affaires, to the Secretary of state, dated the 15th of December, 1810, and the secretary's answer.

See the correspondence between Mr. Monroe and Mr. Foster, the British minister, in the months of July, September, and November, 1811.

however, that the American government, inflexibly maintained its neutral and pacific policy, in every extremity of the latter trial, with the same good faith and forbearance that, in the former trial, had distinguished its conduct; until it was compelled to choose between the alternative of national degradation, or national resistance. And if Great Britain alone then became the object of the American declaration of war, it will be seen that Great Britain alone had obstinately closed the door of amicable negociation.

The American minister at London anticipating the rupture between Great Britain and France, had obtained assurances from the British government, "that, in the event of war, the instructions given to their naval officers should be drawn up with plainness and precision; and, in general, that the rights of belligerents should be exercised in moderation, and with due respect for those of neutrals*." And in relation to the important subject of impressment, he had actually prepared for signature, with the assent of Lord Hawkesbury and Lord St. Vincent, a convention, to continue during five years, declaring that "no seaman, nor seafaring person, should, upon the high seas, and without the jurisdiction of either party, be demanded or taken out of any ship, or vessel, belonging to the citizens or subjects of one of the parties, by the public or private armed ships, or men of war, belonging to, or in the service of, the other party; and that strict orders should be given for the due observance of the engagement†." This convention, which explicitly relinquished impressments from American ves-

* See the letter of Mr. King to the secretary of state, dated the 16th of May, 1803.

† See the letter of Mr. King to the secretary of state, dated July, 1803.

sels on the high seas, and to which the British ministers had, at first, agreed, Lord St. Vincent was desirous afterwards to modify, "stating, that on further reflection he was of opinion, that the narrow seas should be expressly excepted, they having been, as his lordship remarked, immemorially considered to be within the dominion of Great Britain." The American minister, however, "having supposed, from the tenor of his conversations with Lord St. Vincent, that the doctrine of *mare clausum* would not be revived against the United States on this occasion; but that England would be content with the limited jurisdiction, or dominion, over the seas adjacent to her territories, which is assigned by the law of nations to other states, was disappointed on receiving Lord St. Vincent's communication; and chose rather to abandon the negotiation than to acquiesce in the doctrine it proposed to establish." But it was still some satisfaction to receive a formal declaration from the British government, communicated by its minister at Washington, after the recommencement of the war in Europe, which promised, in effect, to reinstate the practice of naval blockades upon the principles of the law of nations; so that no blockade should be considered as existing, "unless in respect of particular ports, which might be actually invested; and then that the vessels bound to such ports should not be captured, unless they had previously been warned not to enter them †."

All the precautions of the American government were, nevertheless, ineffectual, and the assurances of the

* See the letter of Mr. King to the secretary of state, dated July, 1803.

† See the letter of Mr. Merry to the secretary of state, dated the 12th of April, 1804, and the enclosed copy of a letter from Mr. Nepean, the secretary of the admiralty, to Mr. Hammond, the British under secretary of state for foreign affairs, dated Jan. 5, 1804.

British government were, in no instance, verified. The outrage of impressment was again indiscriminately perpetrated upon the crew of every American vessel, and on every sea. The enormity of blockades, established by an order in council, without a legitimate object, and maintained by an order in council, without the application of a competent force, was more and more developed. The rule, denominated "the rule of the war of 1756," was revived in an affected style of moderation, but in a spirit of more rigorous execution *. The lives, the liberty, the fortunes, and the happiness of the citizens of the United States, engaged in the pursuits of navigation and commerce, were once more subjected to the violence and cupidity of the British cruisers. And, in brief, so grievous, so intolerable, had the afflictions of the nation become, that the people, with one mind and one voice, called loudly upon their government for redress and protection †. The congress of the United States, participating in the feelings and resentments of the time, urged upon the executive magistrate the necessity of an immediate demand of reparation from Great Britain ‡; while the same patriotic spirit, which had opposed British usurpation in 1793, and encountered French hostility in 1798, was again pledged, in every variety of form, to the maintenance of the national honour and independence, during the more arduous trial that arose in 1805.

* See the orders in council of the 24th of June, 1803, and the 11th of August, 1805.

† See the memorials of Boston, New York, Philadelphia, Baltimore, &c. presented to Congress in the end of the year 1805, and the beginning of the year 1806.

‡ See the resolutions of the senate of the United States, of the 10th and 14th of February, 1806; and the resolution of the house of representatives of the United States.

Amidst these scenes of injustice on the one hand, and of reclamation on the other, the American government preserved its equanimity and its firmness. It beheld much in the conduct of France, and of her ally, Spain, to provoke reprisals. It beheld more in the conduct of Great Britain, that led, unavoidably (as had often been avowed) to the last resort of arms. It beheld in the temper of the nation, all that was requisite to justify an immediate selection of Great Britain, as the object of a declaration of war. And it could not but behold in the policy of France, the strongest motive to acquire the United States as an associate in the existing conflict. Yet, these considerations did not then, more than at any former crisis, subdue the fortitude, or mislead the judgment, of the American Government; but in perfect consistency with its neutral, as well as its pacific system, it demanded atonement, by remonstrances with France and Spain; and it sought the preservation of peace, by negotiation with Great Britain.

It has been shown, that a treaty proposed, emphatically, by the British minister, resident at Philadelphia, "as the means of drying up every source of complaint, and irritation, upon the head of impressment," was "deemed utterly inadmissible," by the American government, because it did not sufficiently provide for that object §. It has, also, been shown, that another treaty, proposed by the American minister, at London, was laid aside, because the British government, while it was willing to relinquish, expressly, impressments from American vessels on the high seas, insisted upon an exception, in reference to the narrow seas, claimed as a part of the

§ See Mr. Liston's letter to the secretary of state, dated the 4th of February, 1800; and the letter of Mr. Pickering, secretary of state, to the president of the United States, dated the 20th of Feb. 1800.

British dominion: and experience demonstrated, that, although the spoliations committed upon the American commerce, might admit of reparation, by the payment of a pecuniary equivalent; yet, consulting the honour and the feelings of the nation, it was impossible to receive satisfaction for the cruelties of impressment by any other means than by an entire discontinuance of the practice. When, therefore, the envoys extraordinary were appointed in the year 1806, to negotiate with the British government, every authority was given, for the purposes of conciliation; nay, an act of congress, prohibiting the importation of certain articles of British manufacture into the United States, was suspended, in proof of a friendly disposition *; but it was declared, that "the suppression of impressment, and the definition of blockades, were absolutely indispensable;" and that, "without a provision against impressments, no treaty should be concluded." The American envoys, accordingly, took care to communicate to the British commissioners, the limitations of their powers. Influenced, at the same time, by a sincere desire to terminate the differences between the two nations; knowing the solicitude of their government, to relieve its seafaring citizens from actual sufferance; listening, with confidence, to assurances and explanations of the British commissioners, in a sense favourable to their wishes; and judging from a state of information, that gave no immediate cause to doubt the sufficiency of those assurances and explanations; the envoys, rather than terminate the negotiation without any arrangement, were willing to rely upon the efficacy of a substitute, for a positive

* See the act of congress, passed the 18th of April, 1806; and the act suspending it, passed the 19th of December, 1806.

article in the treaty, to be submitted to the consideration of their government, as this, according to the declaration of the British commissioners, was the only arrangement they were permitted, at that time, to propose, or to allow. The substitute was presented in the form of a note from the British commissioners to the American envoys, and contained a pledge, "that instructions had been given, and should be repeated and enforced, for the observance of the greatest caution in the impressing of British seamen; that the strictest care should be taken to preserve the citizens of the United States from any molestation or injury; and that immediate and prompt redress should be afforded, upon any representation of injury sustained by them *."

Inasmuch, however, as the treaty contained no provision against impressment, and it was seen by the government, when the treaty was under consideration for ratification, that the pledge contained in the substitute was not complied with, but, on the contrary, that the impressments were continued, with undiminished violence, in the American seas, so long after the alleged date of the instructions, which were to arrest them; that the practical ineffectivity of the substitute could not be doubted by the government here, the ratification of the treaty was necessarily declined; and it has since appeared, that after a change in the British ministry had taken place, it was declared by the secretary for foreign affairs, that no engagements were entered into, on the part of his majesty, as connected with the treaty, except such as appear upon the face of it †.

* See the note of the British commissioners, dated the 8th of Nov. 1806.

† See Mr. Canning's letter to the American envoys, dated 27th of October, 1807.

The American government, however, with unabating solicitude for peace, urged an immediate renewal of the negotiations on the basis of the abortive treaty, until this course was peremptorily declared by the British government to be "wholly inadmissible*."

But, independent of the silence of the proposed treaty, upon the great topic of American complaint, and of the view which has been taken of the projected substitute; the contemporaneous declaration of the British commissioners, delivered by the command of their sovereign, and to which the American envoys refused to make themselves a party, or to give the slightest degree of sanction, was regarded by the American government, as ample cause of rejection. In reference to the French decree, which had been issued at Berlin, on the 21st of November, 1806, it was declared that if France should carry the threats of that decree into execution, and, if "neutral nations, contrary to all expectation, should acquiesce in such usurpations, his majesty might, probably, be compelled, however reluctantly, to retaliate, in his just defence, and to adopt, in regard to the commerce of neutral nations with his enemies, the same measures which those nations should have permitted to be enforced against their commerce with his subjects;" "that his majesty could not enter into the stipulations of the present treaty, without an explanation from the United States of their intentions, or a reservation on the part of his majesty, in the case above mentioned, if it should ever occur," and "that without a formal abandonment, or tacit relinquishment of the unjust pretensions of France; or without such conduct and assurances upon the part of the United States, as should give secu-

* See Mr. Canning's letter to the American envoys, dated 27th October, 1807.

rity to his majesty, that they would not submit to the French innovations, in the established system of maritime law, his majesty would not consider himself bound by the present signature of his commissioners to ratify the treaty, or precluded from adopting such measures as might seem necessary for counteracting the designs of the enemy*."

The reservation of a power to invalidate a solemn treaty, at the pleasure of one of the parties, and the menace of inflicting punishment upon the United States, for the offences of another nation, proved, in the event, a prelude to the scenes of violence which Great Britain was then about to display, and which it would have been improper for the American negotiators to anticipate. For, if a commentary were wanting to explain the real design of such conduct, it would be found in the fact, that within eight days from the date of the treaty, and before it was possible for the British government to have known the effect of the Berlin decree on the American government; nay, even before the American government had itself heard of that decree, the destruction of American commerce was commenced by the order in council of the 7th of January, 1807, which announced, "that no vessel should be permitted to trade from one port to another, both which ports should belong to, or be in possession of France, or her allies; or should be so far under their controul, as that British vessels might not trade freely thereat†."

During the whole period of this negotiation, which did not finally close until the British government de-

* See the note of the British commissioners, dated the 31st of December, 1806. See also the answer of Messrs. Monroe and Pinkney to that note.

† See the order in council of January 7, 1807.

clared, in the month of October, 1807, that negotiation was no longer admissible, the course pursued by the British squadron, stationed more immediately on the American coast, was in the extreme, vexatious, predatory, and hostile. The territorial jurisdiction of the United States, extending, upon the principles of the law of nations, at least a league over the adjacent ocean, was totally disregarded and contemned. Vessels employed in the coasting trade, or in the business of the pilot and the fisherman, were objects of incessant violence; their petty cargoes were plundered; and some of their scanty crews were often, either impressed, or wounded, or killed, by the force of British frigates.—British ships of war hovered in warlike display upon the coast; blockaded the ports of the United States, so that no vessel could enter or depart in safety; penetrated the bays and rivers, and even anchored in the harbours, of the United States, to exercise a jurisdiction of impressment; threatened the towns and villages with conflagration; and wantonly discharged musketry, as well as cannon, upon the inhabitants of an open and unprotected country. The neutrality of the American territory was violated on every occasion; and, at last, the American government was doomed to suffer the greatest indignity which could be offered to a sovereign and independent nation, in the ever-memorable attack of a British 50-gun ship under the countenance of the British squadron anchored within the waters of the United States, upon the frigate Chesapeake, peaceably prosecuting a distant voyage. The British government affected, from time to time, to disapprove and condemn these outrages; but the officers who perpetrated them were generally applauded: if tried, they were acquitted; if removed from the American station, it was only to be promoted in another station; and if

atonement were offered, as in the flagrant instance of the frigate Chesapeake, the atonement was so ungracious in the manner, and so tardy in the result, as to betray the want of that conciliatory spirit which ought to have characterized it*.

But the American government, soothing the exasperated spirit of the people, by a proclamation which interdicted the entrance of all British armed vessels into the harbours and waters of the United States†, neither commenced hostilities against Great Britain; nor sought a defensive alliance with France; nor relaxed in its firm, but conciliatory efforts, to enforce the claims of justice, upon the honour of both nations.

The rival ambition of Great Britain and France, now, however, approached the consummation, which involving the destruction of all neutral rights upon an avowed principle of action, could not fail to render an actual state of war, comparatively, more safe, and more prosperous, than the imaginary state of peace, to which neutrals were reduced. The just and impartial conduct of a neutral nation, ceased to be its shield and its safeguard, when the conduct of the belligerent powers towards each other, became the only criterion of the law of war. The wrong committed by one of the belligerent powers, was thus made the signal for the perpetration of a greater wrong by the other; and if the American government complained to both powers, their answer,

* See the evidence of these facts reported to congress in November, 1806.

See the documents respecting Captain Love, of the Driver; Captain Whitby, of the Leander; and Captain

See also the correspondence respecting the frigate Chesapeake, with Mr. Canning, at London; with Mr. Rose, at Washington; with Mr. Erskine, at Washington; and with

† See the proclamation of the 2d of July, 1807.

although it never denied the causes of complaint, invariably retorted an idle and offensive inquiry into the priority of their respective aggressions; or each demanded a course of resistance against its antagonist, which was calculated to prostrate the American right of self-government, and to coerce the United States, against their interest and their policy, into becoming an associate in the war. But the American government never did, and never can, admit that a belligerent power, "in taking steps to restrain the violence of its enemy, and to retort upon them the evils of their own injustice *," is entitled to disturb and to destroy the rights of a neutral power, as recognized and established by the law of nations. It was impossible indeed that the real features of the miscalled retaliatory system should be long masked from the world; when Great Britain, even in her acts of professed retaliation, declared, that France was unable to execute the hostile denunciations of her decrees †; and when Great Britain herself unblushingly entered into the same commerce with her enemy (through the medium of forgeries, perjuries and licenses), from which she had interdicted unoffending neutrals. The pride of naval superiority, and the cravings of commercial monopoly, gave, after all, the impulse and direction to the councils of the British cabinet; while the vast, although visionary, projects of France, furnished occasions and pretexts for accomplishing the objects of those councils.

The British minister resident at Washington, in the year 1804, having distinctly recognized, in the name of his sovereign, the legitimate principles of blockade, the American government received with some surprise and

* See the orders in council of the 7th of January, 1807.
 † See the same.

solicitude, the successive notifications of the 9th of August, 1804, the 8th of April, 1806, and, more particularly, of the 16th of May, 1806, announcing, by the last notification, "a blockade of the coast, rivers, and ports, from the river Elbe, to the port of Brest, both inclusive*." In none of the notified instances of blockade, were the principles that had been recognized in 1804, adopted and pursued; and it will be recollected by all Europe, that neither at the time of the notification of the 16th of May 1806, nor at the time of excepting the Elbe and Ems from the operation of that notification †, nor at any time during the continuance of the French war, was there an adequate naval force actually applied by Great Britain, for the purpose of maintaining a blockade from the river Elbe to the port of Brest. It was then, in the language of the day, "a mere paper blockade;" a manifest infraction of the law of nations; and an act of peculiar injustice to the United States, as the only neutral power against which it would practically operate. But whatever may have been the sense of the American government on the occasion; and whatever might be the disposition to avoid making this the ground of an open rupture with Great Britain, the case assumed a character of the highest interest, when, independent of its own injurious consequences, France, in the Berlin decree of the 21st of November, 1806, recited, as a chief cause for placing the British islands in a state of blockade, "that Great Britain declares blockaded places before which she has not a single vessel of war; and even places which her united forces would be incapable of blockading;

* See Lord Harrowby's note to Mr. Monroe, dated the 9th of August, 1804, and Mr. Fox's notes to Mr. Monroe, dated respectively the 8th of April, and 16th of May, 1806.

† See Lord Howick's note to Mr. Monroe dated the 25th September, 1806.

such as entire coasts, and a whole empire: an unequalled abuse of the right of blockade, that had no other object than to interrupt the communications of different nations; and to extend the commerce and industry of England upon the ruin of those nations*." The American government aims not, and never has aimed, at the justification either of Great Britain or of France, in their career of crimination and recrimination: but it is of some importance to observe, that if the blockade of May, 1806, was an unlawful blockade, and if the right of retaliation arose with the first unlawful attack made by a belligerent power upon neutral rights, Great Britain has yet to answer to mankind, according to the rule of her own acknowledgment, for all the calamities of the retaliatory warfare. France, whether right or wrong, made the British system of blockade the foundation of the Berlin decree; and France had an equal right with Great Britain, to demand from the United States an opposition to every encroachment upon the privileges of the neutral character. It is enough, however, on the present occasion, for the American government to observe, that it possessed no power to prevent the framing of the Berlin decree, and to disclaim any approbation of its principles or acquiescence in its operations: for it neither belonged to Great Britain nor to France to prescribe to the American government, the time, or the mode, or the degree of resistance to the indignities and the outrages with which each of those nations, in its turn, assailed the United States.

But it has been shown, that after the British government possessed a knowledge of the existence of the Berlin decree, it authorized the conclusion of the treaty

* See the Berlin decree of the 21st November, 1806.

with the United States, which was signed at London, on the 31st of December, 1806, reserving to itself a power of annulling the treaty, if France did not revoke, or if the United States, as a neutral power, did not resist, the obnoxious measure. It has also been shown, that before Great Britain could possibly ascertain the determination of the United States in relation to the Berlin decree, the orders in council of the 7th of January, 1807, were issued, professing to be a retaliation against France, "at a time when the fleets of France and her allies were themselves confined within their own ports, by the superior valour and discipline of the British navy *;" but operating, in fact, against the United States, as a neutral power, to prohibit their trade "from one port to another, both which ports should belong to, or be in the possession of, France or her allies, or should be so far under their controul, as that British vessels might not trade freely thereat †." It remains, however, to be stated, that it was not until the 12th of March, 1807, that the British minister, then residing at Washington, communicated to the American government, in the name of his sovereign, the orders in council of January, 1807, with an intimation, that stronger measures would be pursued, unless the United States should resist the operations of the Berlin decree ‡. At the moment, the British government was reminded, "that within the period of those great events, which continued to agitate Europe, instances had occurred, in which the commerce of neutral nations, more especially of the United States, had experienced the severest distresses from its own orders and measures, manifestly unauthorized by the law of na-

* See the order in council of the 7th of January, 1807.

† See the same.

‡ See Mr. Erskine's letter to the secretary of state, dated the 12th of March, 1807.

tions;" assurances were given, "that no culpable acquiescence on the part of the United States would render them accessory to the proceedings of one belligerent nation, through their rights of neutrality, against the commerce of its adversary ;" and the right of Great Britain to issue such orders, unless as orders of blockade, to be enforced according to the law of nations, was utterly denied *."

This candid and explicit avowal of the sentiments of the American government upon an occasion so novel and important in the history of nations, did not, however, make its just impression upon the British cabinet; for, without assigning any new provocation on the part of France, and complaining, merely, that neutral powers had not been induced to interpose with effect to obtain a revocation of the Berlin decree, (which, however, Great Britain herself had affirmed to be a decree nominal and inoperative,) the orders in council of the 11th of November, 1807, were issued, declaring, " that all the ports and places of France and her allies, or of any other country at war with his majesty, and all other ports or places in Europe, from which, although not at war with his majesty, the British flag was excluded, and all ports or places in the colonies belonging to his majesty's enemies, should, from thenceforth, be subject to the same restrictions, in point of trade and navigation, as if the same were actually blockaded by his majesty's naval forces, in the most strict and rigorous manner ;" that " all trade in articles which were the produce manufacture of the said countries or colonies, should be deemed and considered to be unlawful;" but that neutr

* See the secretary of state's letter to Mr. Erskine, dated the 20th of March, 1807.

Vessels should still be permitted to trade with France from certain free ports, or through ports and places in the British dominions *. To accept the lawful enjoyment of a right, as the grant of a superior; to prosecute lawful commerce, under the forms of favour and indulgence; and to pay a tribute to Great Britain for the privilege of lawful transit on the ocean; were concessions which Great Britain was disposed, insidiously, to exact, by an appeal to the cupidity of individuals; but which the United States could never yield, consistently with the independence and sovereignty of the nation. The orders in council were, therefore, altered in this respect, at a subsequent period †; but the general interdict of neutral commerce, applying more especially to American commerce, was obstinately maintained, against all the force of reason, of remonstrance, and of protestation, employed by the American government, when the subject was presented to its consideration, by the British minister residing at Washington. The fact assumed as the basis of the orders in council, was unequivocally disowned; and it was demonstrated, that so far from its being true "that the United States had acquiesced in the illegal operation of the Berlin decree, it was not even true that at the date of the British orders of the 11th of November, 1807, a single application of that decree to the commerce of the United States, on the high seas, could have been known to the British government;" while the British government had been officially informed by the American minister at London, "that explanations, uncontradicted by any overt act, had been given to the American minister

* See the orders in council of the 11th of November, 1807.

† See Mr. Canning's letter to Mr. Pinkney, 23d February, 1808.

at Paris, which justified a reliance that the French decree would not be put in force against the United States *."

The British orders of the 11th of November, 1807, were quickly followed by the French decree of Milan, dated the 17th of December, 1807, "which was said to be resorted to only in just retaliation of the barbarous system adopted by England," and in which the denationalizing tendency of the orders is made the foundation of a declaration in the decree, "that every ship to whatever nation it might belong, that should have submitted to be searched by an English ship, or to a voyage to England, or should have paid any tax whatsoever to the English government, was thereby, and for that alone, declared to be denationalized, to have forfeited the protection of its sovereign, and to have become English property, subject to capture as good and lawful prize: that the British islands were placed in a state of blockade, both by sea and land—and every ship, of whatever nation, or whatever the nature of its cargo might be, that sails from the ports of England, or those of the English colonies, and of the countries occupied by English troops, and proceeding to England, or to the English colonies, or to countries occupied by English troops, should be good and lawful prize; but that the provisions of the decree should be abrogated and null, in fact, as soon as the English should abide again by the principles of the law of nations, which are, also, the principles of justice and honour†." In opposition, however, to the Milan decree, as well as to the Berlin decree, the Ame-

* See Mr. Erskine's letter to the secretary of state, dated 22d of February, 1808; and the answer of the secretary of state, dated the 25th of March, 1808.

† See the Milan decree of the 17th of December, 1807.

rican government strenuously and unceasingly employed every instrument, except the instruments of war. It acted precisely towards France, as it acted towards Great Britain, on similar occasions ; but France remained, for a time, as insensible to the claims of justice and honour as Great Britain, each imitating the other in extravagance of pretension, and in obstinacy of purpose.

When the American government received intelligence that the orders of the 11th of November, 1807, had been under the consideration of the British cabinet, and were actually prepared for promulgation, it was anticipated that France, in a zealous prosecution of the retaliatory warfare, would soon produce an act of at least equal injustice and hostility. The crisis existed, therefore, at which the United States were compelled to decide either to withdraw their seafaring citizens and their commercial wealth from the ocean, or to leave the interests of the mariner and the merchant exposed to certain destruction ; or to engage in open and active war, for the protection and defence of those interests. The principles and the habits of the American government, were still disposed to neutrality and peace. In weighing the nature and the amount of the aggressions, which had been perpetrated, or which were threatened, if there were any prepunderance to determine the balance against one of the belligerent powers rather than the other, as the object of a declaration of war ; it was against Great Britain, at least upon the vital interest of impressment, and the obvious superiority of her naval means of annoyance. The French decrees were, indeed, as obnoxious in their formation and design as the British orders ; but the government of France claimed and exercised no right of impressment ; and the maritime spoliations of France were comparatively restricted, not only by her own weakness on the

ocean, but by the constant and pervading vigilance of the fleets of her enemy. The difficulty of selection; the indiscretion of encountering, at once, both of the offending powers; and, above all, the hope of an early return of justice, under the dispensations of the ancient public law, prevailed in the councils of the American government; and it was resolved to attempt the preservation of its neutrality and its peace; of its citizens, and its resources, by a voluntary suspension of the commerce and navigation of the United States. It is true, that for the minor outrages committed, under the pretext of the rule of war of 1756, the citizens of every denomination had demanded from their government, in the year 1805, protection and redress; it is true, that for the unparalleled enormities of the year 1807, the citizens of every denomination again demanded from their government protection and redress: but it is also a truth, conclusively established by every manifestation of the sense of the American people, as well as of their government, that any honourable means of protection and redress were preferred to the last resort of arms. The American government might honourably retire, for a time, from a scene of conflict and collision; but it could no longer, with honour, permit its flag to be insulted, its citizens to be enslaved, and its property to be plundered on the highway of nations.

Under these impressions, the restrictive system of the United States was introduced. In December, 1807, an embargo was imposed upon all American vessels and merchandize*, on principles similar to those which originated and regulated the embargo law, authorised to be laid by the president of the United States in the year

* See the act of Congress, passed the 22d of December, 1807.

1794; but soon afterwards, in the genuine spirit of the policy that prescribed the measure, it was declared by law, "that in the event of such peace, or suspension of hostilities, between the belligerent powers of Europe, or such changes in their measures affecting neutral commerce, as might render that of the United States safe, in the judgment of the president of the United States, he was authorized to suspend the embargo in whole or in part*." The pressure of the embargo was thought, however, so severe upon every part of the community, that the American government, notwithstanding the neutral character of the measure, determined upon some relaxation; and accordingly, the embargo being raised, as to all other nations, a system of non-intercourse and non-importation was substituted in March, 1809, as to Great Britain and France, which prohibited all voyages to the British or French dominions, and all trade in articles of British or French product or manufacture†. But still adhering to the neutral and pacific policy of the government, it was declared "that the president of the United States should be authorized, in case either France or Great Britain should so revoke or modify her edicts, as that they should cease to violate the neutral commerce of the United States, to declare the same by proclamation; after which the trade of the United States might be renewed with the nation so doing ‡." These appeals to the justice and the interests of the belligerent powers proving ineffectual, and the necessities of the country increasing, it was finally resolved, by the American government, to take the hazards of a war; to revoke its restrictive system, and to exclude British and

* See the act of Congress, passed the 22d of April, 1808.

† See the act of Congress, passed the 1st of March, 1809.

‡ See the 11th section of the last cited act of Congress.

French armed vessels from the harbours and waters of the United States; but again, emphatically to announce "that in case either Great Britain or France should, before the 3d of March, 1811, so revoke or modify her edicts, as that they should cease to violate the neutral commerce of the United States; and if the other nation should not, within three months thereafter, so revoke or modify her edicts in like manner," the provisions of the non-intercourse and non-importation law should, at the expiration of three months, be revived against the nation refusing, or neglecting, to revoke or modify its edict *.

In the course which the American government had hitherto pursued, relative to the belligerent orders and decrees, the candid foreigner, as well as the patriotic citizen, may perceive an extreme solicitude for the preservation of peace; but in the publicity and impartiality of the overture that was thus spread before the belligerent powers, it is impossible that any indication should be found of foreign influence or control. The overture was urged upon both nations for acceptance at the same time, and in the same manner; nor was an intimation withheld from either of them, that "it might be regarded by the belligerent first accepting it, as a promise to itself and a warning to its enemy †." Each of the nations, from the commencement of the retaliatory system, acknowledged that its measures were violations of public law; and each pledged itself to retract them whenever the other should set the example ‡. Although the American government, therefore, persisted in its

* See the act of Congress, passed the 1st of May, 1810.

† See the correspondence between the secretary of state and the American ministers at London and Paris.

‡ See the documents laid before congress from time to time by the president, and printed.

remonstrances against the original transgressions, without regard to the question of their priority, it embraced with eagerness every hope of reconciling the interests of the rival powers, with a performance of the duty which they owed to the neutral character of the United States: and when the British minister, residing at Washington, in the year 1809, affirmed, in terms as plain and as positive as language could supply, "that he was authorized to declare, that his Britannic majesty's orders in council of January and November, 1807, will have been withdrawn, as respects the United States, on the 10th day of June, 1809," the president of the United States hastened, with approved liberality, to accept the declaration as conclusive evidence, that the promised fact would exist at the stipulated period; and, by an immediate proclamation, he announced, "that, after the 10th day of June next, the trade of the United States with Great Britain, as suspended by the non-intercourse law, and by the acts of congress laying and enforcing an embargo, might be renewed*." The American government neither asked nor received, from the British minister, an exemplification of his powers; an inspection of his instructions; nor the solemnity of an order in council: but executed the compact, on the part of the United States, in all the sincerity of its own intentions; and in all the confidence which the official act of the representative of his Britannic majesty was calculated to inspire.—The act, and the authority for the act, were, however, disavowed by Great Britain; and an attempt was made by the successor of Mr. Erskine, through the aid of insinuations, which were indignantly repelled, to justify the

* See the correspondence between Mr. Erskine, the British minister, and the secretary of state, on the 17th, 18th, and 19th of April, 1809, and the president's proclamation of the last date.

British rejection of the treaty of 1809, by referring to the American rejection of the treaty of 1806; forgetful of the essential points of difference, that the British government, on the former occasion, had been explicitly apprized by the American negotiators of their defect of power; and that the execution of the projected treaty had not, on either side, been commenced*.

After this abortive attempt to obtain a just and honourable revocation of the British orders in council, the United States were again invited to indulge the hope of safety and tranquillity, when the minister of France announced to the American minister at Paris, that in consideration of the act of the 1st of May, 1809, by which the congress of the United States "engaged to oppose itself to that one of the belligerent powers which should refuse to acknowledge the rights of neutrals, he was authorized to declare, that the decrees of Berlin and Milan were revoked, and that after the 1st of November, 1810, they would cease to have effect; it being understood, that in consequence of that declaration the English should revoke their orders in council, and renounce the new principles of blockade which they had wished to establish; or that the United States, conformably to the act of congress, should cause their rights to be respected by the English †." This declaration, delivered by the official organ of the government of France, and in the presence, as it were, of the French sovereign, was of the highest authority, according to all the rules of diplomatic intercourse; and certainly far surpassed any claim of credence which was possessed by the British minister

* See the correspondence between the secretary of state and Mr. Jackson, the British minister.

† See the Duke de Cadore's letter to Mr. Armstrong, dated the 5th of August, 1810.

residing at Washington, when the arrangement of the year 1809 was accepted and executed by the American government. The president of the United States, therefore, owed to the consistency of his own character, and to the dictates of a sincere impartiality, a prompt acceptance of the French overture: and accordingly, the authoritative promise, that the fact should exist at the stipulated period, being again admitted as conclusive evidence of its existence, a proclamation was issued on the 2d of November, 1810, announcing "that the edicts of France had been so revoked, that they ceased on the 1st day of the same month to violate the neutral commerce of the United States; and that all the restrictions imposed by the act of congress, should then cease and be discontinued in relation to France and her dependencies *." That France from this epoch refrained from all aggressions on the high seas, or even in her own ports, upon the persons and the property of the citizens of the United States, never was asserted; but, on the contrary, her violence and her spoliations have been unceasing causes of complaint. These subsequent injuries, constituting a part of the existing reclamations of the United States, were always, however, disavowed by the French government, whilst the repeal of the Berlin and Milan decrees has, on every occasion, been affirmed; insomuch that Great Britain herself was at last compelled to yield to the evidence of the fact.

On the expiration of three months from the date of the president's proclamation, the non-intercourse and non-importation law was, of course, to be revived against Great Britain, unless, during that period, her orders in council should be revoked. The subject was, therefore,

* See the president's proclamation of the 2d of Nov. 1810.

most anxiously and most steadily pressed upon the justice and the magnanimity of the British government; and even when the hope of success expired, by the lapse of the period prescribed in one act of congress, the United States opened the door of reconciliation by another act, which, in the year 1811, again provided, that in case, at any time, "Great Britain should so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States, the president of the United States should declare the fact by proclamation, and that the restrictions previously imposed should, from the date of such proclamation, cease and be discontinued *." But, unhappily, every appeal to the justice and magnanimity of Great Britain was now, as heretofore, fruitless and forlorn. She had at this epoch impressed from the crews of American merchant vessels, peaceably navigating the high seas, not less than six thousand mariners, who claimed to be citizens of the United States, and who were denied all opportunity to verify their claims. She had seized and confiscated the commercial property of American citizens to an incalculable amount. She had united in the enormities of France, to declare a great proportion of the terraqueous globe in a state of blockade, chasing the American merchant flag effectually from the ocean. She had contemptuously disregarded the neutrality of the American territory, and the jurisdiction of the American laws, within the waters and harbours of the United States. She was enjoying the emoluments of a surreptitious trade, stained with every species of fraud and corruption, which gave to the belligerent powers the advantages of peace, while the neutral powers were involved in the evils of war. She had, in short, usurped

* See the act of congress, passed the 2d of March, 1811.

and exercised on the water, a tyranny similar to that which her great antagonist had usurped and exercised upon the land. And, amidst all these proofs of ambition and avarice, she demanded that the victims of her usurpations and her violence, should revere her as the sole defender of the rights and liberties of mankind.

When, therefore, Great Britain, in manifest violation of her solemn promises, refused to follow the example of France, by the repeal of her orders in council, the American government was compelled to contemplate a resort to arms, as the only remaining course to be pursued, for its honour, its independence, and its safety. Whatever depended upon the United States themselves, the United States had performed for the preservation of peace, in resistance of the French decrees, as well as of the British orders. What had been required from France, in its relation to the neutral character of the United States, France had performed, by the revocation of its Berlin and Milan decrees. But what depended upon Great Britain, for the purposes of justice, in the repeal of her orders in council, was withheld ; and new evasions were sought, when the old were exhausted. It was, at one time, alleged, that satisfactory proof was not afforded that France had repealed her decrees against the commerce of the United States ; as if such proof alone were wanting to ensure the performance of the British promise*. At another time it was insisted, that the repeal of the French decrees, in their operation against the United States, in order to authorise a demand for the performance of the British promise, must be total, applying equally to their internal and their ex-

* See the correspondence between Mr. Pinkney and the British government.

ternal effects; as if the United States had either the right, or the power, to impose upon France the law of her domestic institutions *. And it was finally insisted, in a despatch from Lord Castlereagh to the British minister residing at Washington, in the year 1812, which was officially communicated to the American government, "that the decrees of Berlin and Milan must not be repealed singly and specially in relation to the United States, but must be repealed also as to all other neutral nations; and that in no less extent of a repeal of the French decrees, had the British government ever pledged itself to repeal the orders in council †; as if it were incumbent on the United States not only to assert her own rights, but to become the coadjutor of the British government in a gratuitous assertion of the rights of all other nations.

The congress of the United States could pause no longer. Under a deep and afflicting sense of the national wrongs, and the national resentments—while they postponed definitive measures with respect to France, in the expectation that the result of unclosed discussions between the American minister at Paris and the French government, would speedily enable them to decide with greater advantage on the course due to the rights, the interests, and the honour of the country ‡,—they pronounced a deliberate and solemn declaration of war, between Great Britain and the United States, on the 18th of June, 1812.

* See the letters of Mr. Erskine.

† See the correspondence between the secretary of state and Mr. Foster, the British minister, in June, 1812.

‡ See the president's message of the 1st of June, 1812; and the report of the committee of foreign relations, to whom the message was referred.

But it is in the face of all the facts which have been displayed in the present narrative, that the prince regent, by his declaration of January, 1813, describes the United States as the aggressor in the war. If the act of declaring war constitutes, in all cases, the act of original aggression, the United States must submit to the severity of the reproach; but if the act of declaring war may be more truly considered as the result of long suffering and necessary self defence, the American government will stand acquitted in the sight of Heaven, and of the world. Have the United States, then, enslaved the subjects, confiscated the property, prostrated the commerce, insulted the flag, or violated the territorial sovereignty of Great Britain? No: but in all these respects the United States had suffered, for a long period of years previously to the declaration of war, the contumely and outrage of the British government. It has been said too, as an aggravation of the imputed aggression, that the United States chose a period for their declaration of war, when Great Britain was struggling for her own existence against a power which threatened to overthrow the independence of all Europe; but it might be more truly said, that the United States, not acting upon choice, but upon compulsion, delayed the declaration of war until the persecutions of Great Britain had rendered further delay destructive and disgraceful. Great Britain had converted the commercial scenes of American opulence and prosperity into scenes of comparative poverty and distress; she had brought the existence of the United States, as an independent nation, into question; and surely it must have been indifferent to the United States whether they ceased to exist as an independent nation by her conduct, while she professed friendship, or by her conduct when

she avowed enmity and revenge. Nor is it true that the existence of Great Britain was in danger at the epoch of the declaration of war. The American government uniformly entertained an opposite opinion; and, at all times, saw more to apprehend for the United States from her maritime power, than from the territorial power of her enemy. The event has justified the opinion and the apprehension. But what the United States asked, as essential to their welfare, and even as beneficial to the allies of Great Britain, in the European war, Great Britain, it is manifest, might have granted, without impairing the resources of her own strength, or the splendour of her own sovereignty; for her orders in council have been since revoked; not, it is true, as the performance of her promise, to follow in this respect the example of France, since she finally rested the obligation of that promise upon a repeal of the French decrees as to all nations; and the repeal was only as to the United States: nor as an act of national justice towards the United States; but simply as an act of domestic policy, for the special advantage of her own people.

The British government has also described the war as a war of aggrandizement and conquest on the part of the United States; but where is the foundation for the charge? While the American government employed every means to dissuade the Indians, even those who lived within the territory, and were supplied by the bounty of the United States, from taking any part in the war*, the proofs were irresistible, that the enemy

* See the proceedings of the councils held with the Indians during the expedition under Brig. Gen. Hull; and the talk delivered by the president of the United States to the Six Nations, at Washington, on the 8th of April, 1813.

pursued a very different course*; and that every precaution would be necessary to prevent the effects of an offensive alliance between the British troops and the savages throughout the northern frontier of the United States. The military occupation of Upper Canada was, therefore, deemed indispensable to the safety of that frontier, in the earliest movements of the war, independent of all views of extending the territorial boundary of the United States. But, when war was declared, in resentment for injuries which had been suffered upon the Atlantic, what principle of public law—what modification of civilized warfare, imposed upon the United States the duty of abstaining from the invasion of the Canadas? It was there alone, that the United States could place themselves upon an equal footing of military force with Great Britain; and it was there that they might reasonably encourage the hope of being able, in the prosecution of a lawful retaliation, "to restrain the violence of the enemy, and to retort upon him the evils of his own injustice." The proclamations issued by the American commanders, on entering Upper Canada, have, however, been adduced by the British negotiators at Ghent, as the proofs of a spirit of ambition and aggrandizement on the part of their government. In truth, the proclamations were not only unauthorised and disapproved, but were infractions of the positive instructions which had been given for the conduct of the war in Canada. When the general commanding the north-western army of the United States received, on the 24th of June, 1812, his first authority to commence offensive operations, he was especially told, that "he must not consider himself au-

* See the documents laid before Congress, on the 13th of June, 1812.

thorised to pledge the government to the inhabitants of Canada, further than assurances of protection in their persons, property, and rights." And on the ensuing 1st of August, it was emphatically declared to him, "that it had become necessary that he should not lose sight of the instructions of the 24th of June, as any pledge beyond that was incompatible with the views of the government*." Such was the nature of the charge of American ambition and aggrandizement, and such the evidence to support it.

The prince regent has, however, endeavoured to add to these unfounded accusations, a stigma, at which the pride of the American government revolts. Listening to the fabrications of British emissaries; gathering scandals from the abuses of a free press; and misled, perhaps, by the asperities of a party spirit, common to all free governments; he affects to trace the origin of the war to "a marked partiality in palliating and assisting the aggressive tyranny of France;" and "to the prevalence of such councils as associated the United States in policy with the government of that nation†." The conduct of the American government is now open to every scrutiny; and its vindication is inseparable from a knowledge of the facts. All the world must be sensible, indeed, that neither in the general policy of the late ruler of France, nor in his particular treatment of the United States, could there exist any political or rational foundation for the sympathies and associations, overt or clandestine, which have been rudely and unfairly suggested. It is equally obvious, that nothing short of the aggressive tyranny exercised by Great Britain towards the United

* See the letter from the secretary of the war department, to Brig. Gen. Hull, dated the 24th of June and the 1st of August, 1812.

† See the British declaration of the 10th of January, 1813.

States, could have counteracted and controlled those tendencies to peace and amity, which derived their impulse from natural and social causes, combining the affections and interests of the two nations. The American government, faithful to that principle of public law, which acknowledges the authority of all governments established *de facto*, and conforming its practice, in this respect, to the example of Europe, has never contested the validity of the governments successively established in France; nor refrained from that intercourse with either of them, which the just interests of the United States required. But the British cabinet is challenged to produce, from the recesses of its secret or of its public archives, a single instance of unworthy concession, or of political alliance and combination, throughout the intercourse of the United States with the revolutionary rulers of France. Was it the influence of French councils that induced the American government to resist the pretensions of France in 1793, and to encounter her hostilities in 1798? that led to the ratification of the British treaty in 1795? to the British negociation in 1805, and to the convention with the British minister in 1809? that dictated the impartial overtures which were made to Great Britain as well as to France, during the whole period of the restrictive system? that produced the determination to avoid making any treaty, even a treaty of commerce, with France, until the outrage of the Rambouillet decree was repaired*? that sanctioned the repeated and urgent efforts of the American government to put an end to the war, almost as soon as it was declared? or that, finally, prompted the explicit communication which, in pursuance of instructions, was

* Vide the instructions from the secretary of state to the American minister at Paris, dated the 29th May, 1813.

made by the American minister at St. Petersburg to the Court of Russia, stating, "that the principal subjects of discussion, which had long been subsisting between the United States and France, remained unsettled; that there was no immediate prospect that there would be a satisfactory settlement of them; but that whatever the event in that respect might be, it was not the intention of the government of the United States to enter into any more intimate connexions with France; that the government of the United States did not anticipate any event whatever that could produce that effect; and that the American minister was the more happy to find himself authorized by his government to avow this intention, as different representations of their views had been widely circulated, as well in Europe as in America*." But while every act of the American government thus falsifies the charge of a subserviency to the policy of France, it may be justly remarked, that of all the governments maintaining a necessary relation and intercourse with that nation, from the commencement to the recent termination of the revolutionary establishments, it has happened, that the government of the United States has least exhibited marks of condescension and concession to the successive rulers. It is for Great Britain more particularly, as an accuser, to examine and explain the consistency of the reproaches which she has uttered against the United States with the course of her own conduct; with her repeated negotiations during the republican, as well as during the imperial sway of France; with her solicitude to make and to propose treaties; with her interchange of commercial benefits, so irreconcileable to a

* Vide Mr. Monroe's letter to Mr. Adams, dated the 1st of July, 1812; and Mr. Adams' letter to Mr. Monroe, dated the 11th of December, 1812.

state of war; with the almost triumphant entry of a French ambassador into her capital, amidst the acclamations of the populace; and with the prosecution, instituted by the orders of the King of Great Britain himself, in the highest court of criminal jurisdiction in his kingdom, to punish the printer of a gazette for publishing a libel on the conduct and character of the late ruler of France! Whatever may be the source of these symptoms—however they may indicate a subservient policy—such symptoms have never occurred in the United States, throughout the imperial government of France.

The conduct of the United States, from the moment of declaring the war, will serve, as well as their previous conduct, to rescue them from the unjust reproaches of Great Britain. When war was declared, the orders in council had been maintained with inexorable hostility, until a thousand American vessels with their cargoes had been seized and confiscated under their operation; the British minister at Washington had with peculiar solemnity announced that the orders would not be repealed, but upon conditions which the American government had not the right nor the power to fulfil; and the European war, which had raged with little intermission for twenty years, threatened an indefinite continuance. Under these circumstances, a repeal of the orders and a cessation of the injuries which they produced, were events beyond all rational anticipation. It appears, however, that the orders, under the influence of a parliamentary inquiry into their effects upon the trade and manufactures of Great Britain, were provisionally repealed on the 23d of June, 1812—a few days subsequent to the American declaration of war. If this repeal had been made known to the United States before their resort to arms, the repeal would have arrested it; and

that cause of war being removed, the other essential cause, the practice of impressment, would have been the subject of renewed negociation, under the auspicious influence of a partial, yet important act of reconciliation. But the declaration of war having announced the practice of impressment as a principal cause, peace could only be the result of an express abandonment of the practice: of a suspension of the practice, for the purposes of negociation; or of a cessation of actual sufferance, in consequence of a pacification in Europe, which would deprive Great Britain of every motive for continuing the practice.

Hence, when early intimations were given from Halifax and from Canada, of a disposition on the part of the local authorities to enter into an armistice, the power of those authorities was so doubtful, the objects of the armistice were so limited, and the immediate advantages of the measure were so entirely on the side of the enemy, that the American government could not, consistently with its duty, embrace the propositions *. But some hope of an amicable adjustment was inspired, when a communication was received from Admiral Warren, in September, 1812, stating that he was commanded by his government to propose, on the one hand, "that the government of the United States should instantly recall their letters of marque and reprisal against British ships, together with all orders and instructions for any acts of hostility whatever against the territories of his majesty, or the persons or property of his subjects;" and to promise, on the other hand, if the American govern-

* Vide the letters from the department of state to Mr. Russell, dated the 9th and 10th August, 1812, and Mr. Graham's memorandum of a conversation with Mr. Baker, the British secretary of legation, enclosed in the last letter. Vide, also, Mr. Monroe's letter to Mr. Russell, dated the 21st August, 1812.

ment acquiesced in the preceding proposition, that instructions should be issued to the British squadrons to discontinue hostilities against the United States and their citizens.—This overture, however, was subject to a further qualification, “ that should the American government accede to the proposal for terminating hostilities, the British admiral was authorized to arrange with the American government, as to the revocation of the laws which interdict the commerce and ships of war of Great Britain from the harbours and waters of the United States; but that in default of such revocation within the reasonable period to be agreed upon, the orders in council would be revived *.” The American government at once expressed a disposition to embrace the general proposition for a cessation of hostilities, with a view to negociation; declared that no peace could be durable unless the essential object of impressment was adjusted; and offered, as the basis of the adjustment, to prohibit the employment of British subjects in the naval or commercial service of the United States; but adhering to its determination of obtaining a relief from actual sufferance, the suspension of the practice of impressment, pending the proposed armistice, was deemed a necessary consequence; for “ it could not be presumed while the parties were engaged in a negociation to adjust amicably this important difference, that the United States would admit the right or acquiesce in the practice of the opposite party; or that Great Britain would be unwilling to restrain her cruizers from a practice which would have the strongest effect to defeat the negociation †.” So just, so reasonable, so indispensable

* Vide the letter of Admiral Warren to the secretary of state, dated at Halifax the 20th of September, 1812.

† Vide the letter of Mr. Monroe to Admiral Warren, dated the 27th of October 1812.

a preliminary, without which the citizens of the United States, navigating the high seas, would not be placed by the armistice on an equal footing with the subjects of Great Britain, Admiral Warren was not authorized to accept; and the effort at an amicable adjustment through that channel was necessarily abortive.

But long before the overture of the British admiral was made, (a few days, indeed, after the declaration of war,) the reluctance with which the United States had resorted to arms, was manifested by the steps taken to arrest the progress of hostilities, and to hasten a restoration of peace. On the 26th of June, 1812, the American charge d'affaires at London was instructed to make the proposal of an armistice to the British government, which might lead to an adjustment of all differences, on the single condition, in the event of the orders in council being repealed, that instructions should be issued, suspending the practice of impressment during the armistice. This proposal was soon followed by another, admitting, instead of positive instructions, an informal understanding between the two governments on the subject *. But both of these proposals were unhappily rejected †. And when a third, which seemed to leave no plea for hesitation, as it required no other preliminary than that the American minister at London, should find in the British government a sincere disposition to accommodate the difference relative to impressment on fair conditions, was evaded, it was obvious that neither a desire of peace, nor a spirit of conciliation, influenced the councils of Great Britain.

* See the letters from the secretary of state to Mr. Russell, dated the 26th of June and 27th of July, 1812.

† See the correspondence between Mr. Russell and Lord Castlereagh, dated August and September, 1812; and Mr. Russell's letter to the secretary of state, dated Sept. 1812.

Under these circumstances, the American government had no choice but to invigorate the war; and yet it has never lost sight of the object of all just wars—a just peace. The emperor of Russia having offered his mediation to accomplish that object, it was instantly and cordially accepted by the American government*; but it was peremptorily rejected by the British government. The emperor, in his benevolence, repeated his invitation; the British government again rejected it. At last, however, Great Britain, sensible of the reproach to which such conduct would expose her throughout Europe, offered to the American government a direct negociation for peace, and the offer was promptly embraced; with perfect confidence that the British government would be equally prompt in giving effect to its own proposal. But such was not the design or the course of that government. The American envoys were immediately appointed, and arrived at Gottenburgh, the destined scene of negociation, on the 11th of April, 1814, as soon as the season admitted. The British government, though regularly informed that no time would be lost on the part of the United States, suspended the appointment of its envoys until the actual arrival of the American envoys should be formally communicated. This pretension, however novel and inauspicious, was not permitted to obstruct the path to peace. The British government next proposed to transfer the negociation from Gottenburgh to Ghent. This change also, notwithstanding the necessary delay, was allowed. The American envoys arriving at Ghent on the 24th of June, remained in a mortifying state of suspense and expectation for the arrival of the British envoys, until the 6th of August.

* Vide the correspondence between Mr. Monroe and Mr. Daschkoff, in March, 1813.

And from the period of opening the negotiations to the date of the last despatch of the 31st of October, it has been seen that the whole of the diplomatic skill of the British government has consisted in consuming time, without approaching any conclusion. The pacification of Paris had suddenly and unexpectedly placed at the disposal of the British government a great naval and military force; the pride and passions of the nation were artfully excited against the United States; and a war of desperate and barbarous character was planned at the very moment that the American government, finding its maritime citizens relieved, by the course of events, from actual sufferance under the practice of impressment, had authorized its envoys to waive those stipulations upon the subject, which might otherwise have been indispensable precautions.

Hitherto the American government has shewn the justice of its cause, its respect for the rights of other nations, and its inherent love of peace. But the scenes of war will also exhibit a striking contrast between the conduct of the United States and the conduct of Great Britain. The same insidious policy which taught the prince regent to describe the American government as the aggressor in the war, has induced the British government (clouding the daylight truth of the transaction) to call the atrocities of the British fleets and armies a retaliation upon the example of the American troops in Canada. The United States tender a solemn appeal to the civilized world against the fabrication of such a charge; and they vouch, in support of their appeal, the known morals, habits, and pursuits of their people—the character of their civil and political institutions, and the whole career of their navy and their army, as humane as it is brave. Upon what pretext did the British admiral,

on the 18th of August, 1814, announce his determination "to destroy and lay waste such towns and districts upon the coast as might be found assailable *?" It was the pretext of a request from the governor-general of the Canadas for aid to carry into effect measures of retaliation, while, in fact, the barbarous nature of the war had been deliberately settled and prescribed by the British cabinet. What could have been the foundation of such a request? The outrages and the irregularities which too often occur during a state of national hostilities, in violation of the laws of civilized warfare, are always to be lamented, disavowed, and repaired, by a just and honourable government; but if disavowal be made, and if reparation be offered, there is no foundation for retaliatory violence. "Whatever unauthorized irregularity may have been committed by any of the troops of the United States, the American government has been ready, upon principles of sacred and eternal obligation, to disavow, and as far as it might be practicable, to repair †." In every known instance (and they are few) the offenders have been subjected to the regular investigation of a military tribunal; and an officer commanding a party of stragglers who were guilty of unworthy excesses, was immediately dismissed, without the form of a trial, for not preventing those excesses. The destruction of the village of Newark, adjacent to Fort George, on the 10th of December, 1813, was long subsequent to the pillage and conflagration committed on the shores of the Chesapeake, throughout the summer of the same year; and might fairly have been alleged as a retaliation for those out-

* Vide Admiral Cochrane's letter to Mr. Monroe, dated the 18th of August, 1814; and Mr. Monroe's answer of the 6th Sept. 1814.

† Vide the letter from the secretary at war to Brigadier General M'Lure, dated the 4th of October, 1813.

rages; but, in fact, it was justified by the American commander who ordered it, on the ground that it became necessary to the military operations at that place*; while the American government, as soon as it heard of the act, on the 6th of January, 1814, instructed the general commanding the northern army, "to disavow the conduct of the officer who committed it, and to transmit to governor Prevost a copy of the order under colour of which that officer had acted †." This disavowal was accordingly communicated; and on the 10th of February, 1814, governor Prevost answered, "that it had been with great satisfaction he had received the assurance, that the perpetration of the burning of the town of Newark, was both unauthorized by the American government, and abhorrent to every American feeling; that if any outrages had ensued the wanton and unjustifiable destruction of Newark, passing the bounds of just retaliation, they were to be attributed to the influence of irritated passions, on the part of the unfortunate sufferers by that event, which, in a state of active warfare, it has not been possible altogether to restrain; and that it was as little congenial to the disposition of his majesty's government as it was to that of the government of the United States, deliberately to adopt any plan of policy which had for its object the devastation of private property ‡." But the disavowal of the American government was not the only expiation of the offence committed by its officer; for the British government assumed the province

* General M'Lure's letters to the secretary of war, dated December 10 and 18, 1813.

+ Vide the letter from the secretary at war to Major-General Wilkinson, dated 26th of January, 1814.

‡ Vide the letter of Major General Wilkinson to Sir George Prevost, dated the 28th of January, 1814, and the answer of Sir George Prevost, on the 10th of February, 1814.

of redress in the indulgence of its own vengeance. A few days after the burning of Newark, the British and Indian troops crossed the Niagara for this purpose; they surprized and seized Fort Niagara, and put its garrison to the sword; they burnt the villages of Lewiston, Manchester, Tuscarora, Buffalo, and Black Rock; slaughtering and abusing the unarmed inhabitants, until, in short, they had laid waste the whole of the Niagara frontier, levelling every house and every hut, and dispersing, beyond the means of shelter, in the extremity of the winter, the male and the female, the old and the young. Sir George Prevost himself appears to have been sated with the ruin and havock which had been thus inflicted. In his proclamation of the 12th of January, 1814, he emphatically declared, that for the burning of Newark, "the opportunity of punishment had occurred, and a full measure of retaliation had taken place;" and "that it was not his intention to pursue further a system of warfare so revolting to his own feelings, and so little congenial to the British character, unless the future measures of the enemy should compel him again to resort to it *." Nay, with his answer to the American general, already mentioned, he transmitted "a copy of that proclamation, as expressive of the determination as to his future line of conduct;" and added, "that he was happy to learn, that there was no probability that any measures on the part of the American government would oblige him to depart from it †." Where, then, shall we search for the foundation of the call upon the British admiral, to aid the governor of Canada in measures of

* Vide Sir George Prevost's proclamation, dated at Quebec, the 12th of January, 1814.

† Vide the letter of Sir George Prevost to General Wilkinson, dated the 10th of February, 1814: and the British general orders of the 22d of February, 1814.

retaliation? Great Britain forgot the principle of retaliation when her orders in council were issued against the unoffending neutral, in resentment of outrages committed by her enemy; and surely she had again forgotten the same principle, when she threatened an unceasing violation of the laws of civilized warfare, in retaliation for injuries which never existed, or which the American government had explicitly disavowed, or which had been already avenged by her own arms, in a manner and a degree cruel and unparalleled. The American government, after all, has not hesitated to declare, that "for the reparation of injuries, of whatever nature they may be, not sanctioned by the law of nations, which the military or naval force of either power might have committed against the other, it would always be ready to enter into reciprocal arrangements; presuming that the British government would neither expect nor propose any which were not reciprocal *."

It is now, however, proper to examine the character of the warfare which Great Britain has waged against the United States. In Europe it has already been remarked, with astonishment and indignation, as a warfare of the tomahawk, the scalping knife, and the torch; as a warfare incompatible with the usages of civilized nations; as a warfare that, disclaiming all moral influence, inflicts an outrage upon social order, and gives a shock to the very elements of humanity. All belligerent nations can form alliances with the savage, the African, and the blood-hound: but what civilized nation has selected these auxiliaries in its hostilities? It does not require the fleets and armies of Great Britain to lay waste an open country; to burn unfortified towns, or unprotected

* See Mr. Monroe's letter to Admiral Cochrane, dated the 6th of September, 1814.

villages; nor to plunder the merchant, the farmer, and the planter of his stores — these exploits may easily be achieved by a single cruizer, or a petty privateer: but when have such exploits been performed on the coasts of the continent of Europe, or of the British islands, by the naval and military force of any belligerent power; or when have they been tolerated by any honourable government, as the predatory enterprise of armed individuals? Nor is the destruction of the public edifices which adorn the metropolis of a country, and serve to commemorate the taste and science of the age, beyond the sphere of action of the vilest incendiary, as well as of the most triumphant conqueror. It cannot be forgotten, indeed, that in the course of ten years past, the capitals of the principal powers of Europe have been conquered, and occupied alternately, by the victorious armies of each other*; and yet there has been no instance of a conflagration of the palaces, the temples, or the halls of justice. No: such examples have proceeded from Great Britain alone; a nation so elevated in its pride, so awful in its power, and so affected in its tenderness for the liberties of mankind! The charge is severe; but let the facts be adduced.

1. Great Britain has violated the principles of social law, by insidious attempts to excite the citizens of the United States into acts of contumacy, treason, and revolt against their government. For instance:

No sooner had the American government imposed the restrictive system upon its citizens, to escape from the rage and depredation of the belligerent powers, than the British government, then professing amity towards the

* See Mr. Monroe's letter to Admiral Cochrane, dated the 6th of Sept. 1814.

United States, issued an order which was in effect an invitation to the American citizens to break the laws of their country, under a public promise of British protection and patronage "to all vessels which should engage in an illicit trade, without bearing the customary ship's documents and papers*."

Again:—During a period of peace between the United States and Great Britain, in the year 1809, the governor-general of the Canadas employed an agent (who had previously been engaged in a similar service, with the knowledge and approbation of the British cabinet,) "on a secret and confidential mission" into the United States, declaring, "that there was no doubt that his able execution of such a mission, would give him a claim, not only on the governor-general, but on his majesty's ministers." The object of the mission was, 'to ascertain whether there existed a disposition, in any portion of the citizens, "to bring about a separation of the eastern states from the general union; and how far, in such an event, they would look up to England for assistance, or be disposed to enter into a connexion with her." The agent was instructed "to insinuate, that if any of the citizens should wish to enter into a communication with the British government, through the governor-general, he was authorised to receive such communication; and that he would safely transmit it to the governor general†." He was accredited by a formal instrument, under the seal and signature of the governor-general, to be produced "if he saw good ground for expecting that the doing so might lead to a more confidential communication than he could otherwise look for;" and he was furnished with a cipher, "for carrying on the secret correspondence‡."

The virtue and patriotism of the citizens of the United States were superior to the arts and corruption employed in this secret and confidential mission, if it ever was disclosed to any of them;

* See the instructions to the commanders of British ships of war and privateers, dated the 11th of April, 1808.

† See the letter from Mr. Ryland, the secretary of the governor-general, to Mr. Henry, dated the 26th January, 1809.

‡ See the letter of Sir James Craig to Mr. Henry, dated Feb. 6, 1809.

and the mission itself terminated as soon as the arrangement with Mr. Erskine was announced*. But, in the act of recalling the secret emissary, he was informed, "that the whole of his letters were transcribing to be sent home, where they could not fail of doing him great credit, and it was hoped they might eventually contribute to his permanent advantage†." To endeavour to realize that hope, the emissary proceeded to London; all the circumstances of his mission were made known to the British minister; his services were approved and acknowledged; and he was sent to Canada for a reward; with a recommendatory letter from Lord Liverpool to Sir George Prevost, "stating his lordship's opinion of the ability and judgment which Mr. Henry had manifested on the occasions mentioned in his memorial, (his secret and confidential missions,) and of the benefit the public service might derive from his active employment in any public situation in which Sir George Prevost might think proper to place him‡," The world will judge upon these facts, and the rejection of a parliamentary call—for the production of the papers relating to them, what credit is due to the prince regent's assertion, "that Mr. Henry's mission was undertaken without the authority or even knowledge of his majesty's government." The first mission was certainly known to the British government at the time it occurred; for the secretary of the governor general expressly states, "that the information and political observations heretofore received from Mr. Henry, were transmitted by his excellency to the secretary of state, who had expressed his particular approbation of them§;" the second mission was approved when it was known; and it remains for the British government to explain, upon any established principles of morality and justice, the essential difference between ordering the

* See the same letter, and Mr. Ryland's letter of the 26th of January, 1809.

† See Mr. Ryland's letter dated the 26th of June, 1809.

‡ See the letter from Lord Liverpool to Sir George Prevost, dated the 16th of September, 1811.

§ See Mr. Ryland's letter of the 26th of January, 1809.

offensive acts to be done : and reaping the fruit of those acts, without either expressly or tacitly condemning them.

Again : These hostile attempts upon the peace and union of the United States, preceding the declaration of war, have been followed by similar machinations, subsequent to that event. The governor-general of the Canadas has endeavoured occasionally, in his proclamations and general orders, to dissuade the militia of the United States from the performance of the duty which they owed to their injured country ; and the efforts at Quebec and Halifax to kindle the flame of civil war, have been as incessant as they have been insidious and abortive. Nay, the governor of the island of Barbadoes, totally forgetful of the boasted article of the British magna charta, in favour of foreign merchants found within the British dominions upon the breaking out of hostilities, resolved that every American merchant, within his jurisdiction at the declaration of war, should at once be treated as a prisoner of war ; because every citizen of the United States was enrolled in the militia ; because the militia of the United States were required to serve their country beyond the limits of the state to which they particularly belonged ; and because the militia of " all the states which had acceded to this measure, were, in the view of Sir George Beckwith, acting as a French conscription * . "

Again : Nor was this course of conduct confined to the colonial authorities. On the 26th of October, 1812, the British government issued an order in council, authorizing the governors of the British West India Islands to grant licenses to American vessels, for the importation and exportation of certain articles enumerated in the order ; but, in the instructions which accompanied the order, it was expressly provided, that " whatever importations were proposed to be made from the United States of America should be by licenses, confined to the ports in the eastern states exclusively, unless there was reason to sup-

* See the remarkable state paper issued by Governor Beckwith, at Barbadoes, on the 13th of November, 1812.

pose that the object of the order would not be fulfilled, if licenses were not granted for importations from the other ports in the United States*."

The president of the United States has not hesitated to place before the nation, with expressions of a just indignation, "the policy of Great Britain thus proclaimed to the world; introducing into her modes of warfare, a system equally distinguished by the deformity of its features and the depravity of its character; and having for its object to dissolve the ties of allegiance, and the sentiments of loyalty, in the adversary nation; and to seduce and separate its component parts the one from the other†."

2. Great Britain has violated the laws of humanity and honour, by seeking alliances, in the prosecution of the war with savages, pirates, and slaves.

The British agency, in exciting the Indians, at all times, to commit hostilities upon the frontier of the United States, is too notorious to admit of a direct and general denial. It has sometimes, however, been said, that such conduct was unauthorized by the British government; and the prince regent, seizing the single instance of an intimation, alledged to be given on the part of Sir James Craig, governor of the Canadas, that an attack was meditated by the Indians, has affirmed, that "the charge of exciting the Indians to offensive measures against the United States, was void of foundation; that, before the war began, a policy the most opposite had been uniformly pursued; and that proof of this was tendered by Mr. Foster to the American government‡." But is it not known in Europe, as well as in America, that the British Northwest Company maintain a con-

* See the proclamation of the Governor of Bermuda, dated the 14th of January, 1814; and the instructions from the British secretary for foreign affairs, dated November 9, 1812.

† See the message from the president to congress, dated the 24th of February, 1813.

‡ See the prince regent's declaration of the 10th of January, 1813.

See also Mr. Foster's letters to Mr. Monroe, dated the 28th of December, 1811, and the 7th and 8th of June, 1812; and Mr. Monroe's answer, dated the 9th of January, 1812, and the 10th of June, 1812; and the documents which accompanied the correspondence.

stant intercourse of trade and council with the Indians ; that their interests are often in direct collision with the interests of the inhabitants of the United States, and that by means of the inimical dispositions, and the active agencies of the company, (seen, understood, and tacitly sanctioned by the local authorities of Canada) all the evils of an Indian war may be shed upon the United States, without the authority of a formal order emanating immediately from the British government ? Hence the American government, in answer to the evasive protestations of the British minister, residing at Washington, frankly communicated the evidence of British agency, which had been received at different periods since the year 1807 ; and observed, " that whatever may have been the disposition of the British government, the conduct of its subordinate agents had tended to excite the hostility of the Indian tribes towards the United States ; and that, in estimating the comparative evidence on the subject, it was impossible not to recollect the communication lately made respecting the conduct of Sir James Craig, in another important transaction, (the employment of Mr. Henry, as an accredited agent, to alienate and detach the citizens of a particular section of the union from their government,) which it appeared was approved by Lord Liverpool *."

The proof, however, that the British agents and military officers were guilty of the charge thus exhibited, become conclusive, when, subsequent to the communication which was made to the British minister, the defeat and flight of General Proctor's army, on the 5th of August, placed in the possession of the American commander the correspondence and papers of the British officers. Selected from the documents which were obtained upon that occasion, the contents of a few letters will serve to characterize the whole of the mass. In these letters, written by Mr. M'Kee, the British agent, to Colonel England, the commander of the British troops, superscribed "on his majesty's service," and dated during the months of July and August,

* See Mr. Monroe's letter to Mr. Foster, dated the 10th of June, 1819.

1794, the period of General Wayne's successful expedition against the Indians, it appears that the scalps taken by the Indians were sent to the British establishment at the rapids of the Miami*; that the hostile operations of the Indians were concerted with the British agents and officers †; that when certain tribes of Indians, "having completed the belts they carried with scalps and prisoners, and being without provisions, resolved on going home, it was lamented that his majesty's posts would derive no security from the late great influx of Indians into that part of the country, should they persist in their resolutions of returning so soon ‡;" that "the British agents were immediately to hold a council at the Glaze, in order to try if they could prevail on the lake Indians to remain; but that, without provisions and ammunition being sent to that place, it was conceived to be extremely difficult to keep them together §;" and that "Colonel England was making great exertions to supply the Indians with provisions ||." But the language of the correspondence becomes at length so plain and direct, that it seems impossible to avoid the conclusion of a governmental agency on the part of Great Britain, in advising, aiding, and conducting the Indian war, while she professed friendship and peace towards the United States. "Scouts are sent (says Mr. M'Kee to Colonel England) to view the situation of the American army; and *we now muster one thousand Indians.* All the Lake Indians, from Sugana downwards, should not lose one moment in joining their brethren, as every accession of strength is an addition to their spirits ¶." And again: "I have been employed several days in endeavouring to fix the Indians, who have been driven from their villages and corn-fields, between the fort and the bay. Swan

* See the letter from Mr. M'Kee to Colonel England, dated the 2d of July, 1794.

† See the letter from the same to the same, dated the 5th of July, 1794.

‡ See the same letter.

§ See the same letter.

|| See the same letter.

¶ See the letter from Mr. M'Kee to Colonel England, dated the 10th of August, 1794.

Creek is generally agreed upon, and will be a very convenient place for the delivery of provisions*, &c. Whether, under the various proofs of the British agency, in exciting Indian hostilities against the United States in a time of peace, presented in the course of the present narrative, the prince regent's declaration, that "before the war began, a policy the most opposite had been uniformly pursued," by the British government †, is to be ascribed to a want of information or a want of candour, the American government is not disposed more particularly to investigate.

But independent of these causes of just complaint, arising in a time of peace, it will be found that when the war was declared, the alliance of the British government with the Indians was avowed upon principles the most novel, producing consequences the most dreadful. The savages were brought into the war upon the ordinary footing of allies, without regard to the inhuman character of their warfare, which neither spares age nor sex; and which is more desperate towards the captive at the stake than even towards the combatant in the field. It seemed to be a stipulation of the compact between the allies, that the British might imitate but should not control the ferocity of the savages.—While the British troops behold without compunction the tomahawk and the scalping knife brandished against prisoners, old men, and children, and even against pregnant women, and while they exultingly accept the bloody scalps of the slaughtered Americans‡, the Indian exploits in battle are recounted and applauded by the British general orders. Rank and station are assigned to them in the military movements of the British army; and the unhallowed league was ratified with appropriate emblems, by intertwining an Ameri-

* See the letter from the same to the same, dated the 30th of August, 1794.

† See the prince regent's declaration of the 10th of January, 1813.

‡ See the letter from the American Gen. Harrison to the British Gen. Proctor.

See a letter from the British Major Mair, Indian agent, to Col. Proctor, dated 26th Sept. 1812, and a letter from Col. St. George to Col. Proctor, dated 28th Oct. 1812, found among Col. Proctor's papers.

can scalp with the decorations of the mace, which the commander of the northern army of the United States found in the legislative chamber of York, the capital of Upper Canada.

In the single scene that succeeded the battle of Frenchtown, near the river Raisin, where the American troops were defeated by the allies under the command of General Proctor, there will be found concentrated, upon indisputable proof, an illustration of the horrors of the warfare which Great Britain has pursued, and still pursues, in co-operation with the savages of the south as well as with the savages of the north. The American army capitulated on the 22d January 1813, yet, after the faith of the British commander had been pledged in the terms of the capitulation, and while the British officers and soldiers silently and exultingly contemplated the scene, some of the American prisoners of war were tomahawked, some were shot and some were burnt. Many of the unarmed inhabitants of the Michigan territory were massacred, their property was plundered, and their houses were destroyed *. The dead bodies of the mangled Americans were exposed unburied, to be devoured by dogs and swine, "because, as the British officers declared, the Indians would not permit the interment †;" and some of the Americans who survived the carnage, had been extricated from danger only by being purchased at a price, as a part of the booty belonging to the Indians. But, to complete this dreadful view of human depravity and human wretchedness, it is only necessary to add, that an American physician, who was despatched with a flag of truce to ascertain the situation of his wounded brethren, and two persons his companions, were intercepted by the Indians in their humane mission; the privilege of the flag was disregarded by the British officers; the physician, after being wounded, and one of his companions,

* See the report of the committee of the house of representatives, on the 31st July, 1812, and the depositions and documents accompanying it.

† See the official report of Mr. Baker, the agent for the prisoners, to Brig. Gen. Winchester, dated the 26th February, 1813.

were made prisoners, and the third person of the party was killed*.

But the savage who had never known the restraints of civilized life, and the pirate who had broken the bonds of society, were alike the objects of British conciliation and alliance, for the purposes of an unparalleled warfare. A horde of pirates and outlaws had formed a confederacy and establishment on the island of Barrataria, near the mouth of the river Mississippi. Will Europe believe that the commander of the British forces addressed the leader of the confederacy, from the neutral territory of Pensacola, "calling upon him, with his brave followers, to enter into the service of Great Britain, in which he should have the rank of captain, promising that lands should be given to them all, in proportion to their respective ranks, on a peace taking place, assuring them that their property should be guaranteed and their persons protected; and asking in return that they would cease all hostilities against Spain, or the allies of Great Britain, and place their ships and vessels under the British commanding officer on the station, until the commander in chief's pleasure should be known, with a guarantee of their fair value at all events†?" There wanted only to exemplify the debasement of such an act, the occurrence, that the pirate should spurn the proffered alliance; and accordingly Lafitt's answer was indignantly given by a delivery of the letter, containing the British proposition, to the American governor of Louisiana.

There were other sources, however, of support which Great Britain was prompted by her vengeance to employ, in opposition to the plainest dictates of her own colonial policy. The events which have extirpated or dispersed the white population of St. Domingo, are in the recollection of all men. Although

* In addition to this description of savage warfare under British auspices, see the facts contained in the correspondence between Gen. Harrison and Gen. Drumond.

† See the letter addressed by Edward Nichols, lieut. col. commanding his Britannic majesty's force in the Floridas, to Monsieur Lafitt, or the commandant at Barrataria, dated the 31st of August, 1814.

British humanity might not shrink from the infliction of similar calamities upon the southern states of America, the danger of that course, either as an incitement to a revolt of the slaves in the British islands, or as a cause of retaliation on the part of the United States, ought to have admonished her against its adoption. Yet, in a formal proclamation issued by the commander in chief of his Britannic majesty's squadrons upon the American station, the slaves of the American planters were invited to join the British standard, in a covert phraseology, that afforded but a slight veil for the real design. Thus, Admiral Cochrane, reciting, "that it had been represented to him that many persons now resident in the United States had expressed a desire to withdraw therefrom, with a view of entering into *his majesty's service*, or of being received as *free settlers* into some of his majesty's colonies," proclaimed, that "all those who might be disposed to emigrate from the United States, would, with their families, be received on board his majesty's ships or vessels of war, or at the military posts that might be established upon or near the coast of the United States, when they would have their choice of either entering into his majesty's sea or land forces, or of being sent as *free settlers* to the British possessions in North America or the West Indies, where they would meet all due encouragement*." But even the negroes seem, in contempt or disgust, to have resisted the solicitation; no rebellion or massacre ensued; and the allegation often repeated, that in relation to those who were seduced or forced from the service of their masters, instances have occurred of some being afterwards transported to the British West India islands, and there sold into slavery for the benefit of the captors, remains without contradiction. So complicated an act of injustice would demand the reprobation of mankind. And let the British government, which professes a just abhorrence of the African slave trade, which endeavours to impose in that respect restraints upon the domestic policy of

* See Admiral Cochrane's proclamation, dated at Bermuda, the 9th of April, 1814.

France, Spain, and Portugal, answer, if it can, the solemn charge against their faith and their humanity.

3. Great Britain has violated the laws of civilized warfare by plundering private property, by outraging female honour, by burning unprotected cities, towns, villages, and houses, and by laying waste whole districts of an unresisting country.

The menace and the practice of the British naval and military force, "to destroy and lay waste such towns and districts upon the American coast as might be found assailable," have been excused upon the pretext of retaliation, for the wanton destruction committed by the American army in Upper Canada*, but the fallacy of the pretext has already been exposed. It will be recollected, however, that the act of burning Newark was instantaneously disavowed by the American government; that it occurred in December 1813—and that Sir George Prevost himself acknowledged, on the 10th of February 1814, that the measure of retaliation for all the previously imputed misconduct of the American troops was then full and complete†. Between the month of February, 1814, when that acknowledgement was made, and the month of August, 1814, when the British admiral's denunciation was issued, what are the outrages upon the part of the American troops in Canada, to justify a call for retaliation? No: it was the system, not the incident of the war; and intelligence of the system had been received at Washington from the American agents in Europe, with reference to the operations of Admiral Warren upon the shores of the Chesapeake, long before Admiral Cochrane had succeeded to the command of the British fleet on the American station.

As an appropriate introduction to the kind of war which Great Britain intended to wage against the inhabitants of the United States, transactions occurred in England, under the avowed direction of the government itself, that could not fail to

* See Admiral Cochrane's letter to Mr. Monroe, dated August 18, 1814.

† See Sir George Prevost's letter to General Wilkinson, dated the 10th of February, 1814.

wound the moral sense of every candid and generous spectator. All the officers and mariners of the American merchant ships, who, having lost their vessels in other places, had gone to England on the way to America; or who had been employed in British merchant ships, but were desirous of returning home; or who had been detained, in consequence of the condemnation of their vessels under the British orders in council; or who had arrived in England, through any of the other casualties of the seafaring life—were condemned to be treated as prisoners of war; nay, some of them were actually impressed, while soliciting their passports, although not one of their number had been in any way engaged in hostilities against Great Britain; and although the American government had afforded every facility to the departure of the same class, as well as of every other class of British subjects from the United States, for a reasonable period after the declaration of war*. But this act of injustice, for which even the pretext of retaliation has not been advanced, was accompanied by another of still greater cruelty and oppression. The American seamen, who had been enlisted or impressed into the naval service of Great Britain, were long retained, and many of them are yet retained on board of British ships of war, where they are compelled to combat against their country and their friends: and even when the British government tardily and reluctantly recognized the citizenship of impressed Americans, to a number exceeding one thousand at a single naval station, and dismissed them from its service on the water—it was only to immure them as prisoners of war on the shore. These unfortunate persons, who had passed into the power of the British government, by a violation of their own rights and inclinations, as well as of the rights of their country, and who could only be regarded as the spoils of unlawful violence, were nevertheless treated as the fruits of lawful war. Such was the indemnification which Great Britain offered for

* See Mr. Beasley's correspondence with the British government in October, November, and December, 1812.

See also the act of Congress, passed the 6th of July, 1812.

the wrongs that she had inflicted, and such the reward which she bestowed for services that she had received *.

Nor has the spirit of British warfare been confined to violations of the usages of civilized nations, in relation to the United States. The system of blockade, by orders in council, has been revived; and the American coast, from Maine to Louisiana, has been declared, by the proclamation of a British admiral, to be in a state of blockade, which every day's observation proves to be practically ineffectual, and which, indeed, the whole of the British navy would be unable to enforce and maintain †. Neither the orders in council, acknowledged to be generally unlawful, and declared to be merely retaliatory upon France; nor the Berlin and Milan decrees, which placed the British islands in a state of blockade, without the force of a single squadron to maintain it; were, in principle, more injurious to the rights of neutral commerce than the existing blockade of the United States. The revival, therefore, of the system, without the retaliatory pretext, must demonstrate to the world a determination on the part of Great Britain to acquire a commercial monopoly, by every demonstration of her naval power. The trade of the United States with Russia, and with other northern powers, by whose governments no edicts violating neutral rights, had been issued, was cut off by the operation of the British orders in council of the year 1807, as effectually as their trade with France and her allies, although the retaliatory principle was totally inapplicable to the case. And the blockade of the year 1814 is an attempt to destroy the trade of those nations, and indeed of all the other nations of Europe, with the United States; while Great Britain herself, with the same policy and ardour that marked her illicit trade with France, when France was her enemy, encourages a clandestine traffic between her subjects and the American citi-

* See the letter from Mr. Beasley to Mr. M'Leay, dated the 13th of March, 1815.

† See the successive blockades announced by the British government, and the successive naval commanders on the American station.

zens, wherever her possessions come in contact with the territory of the United States.

But approaching nearer to the scenes of plunder and violence, of cruelty and conflagration, which the British warfare exhibits on the coast of the United States, it must be again asked, what acts of the American government, of its ships of war, or of its armies, had occurred, or were even alleged, as a pretext for the perpetration of this series of outrages? It will not be asserted that they were sanctioned by the usages of modern war, because the sense of all Europe would revolt at the assertion. It will not be said, that they were the unauthorized excesses of the British troops; because scarcely an act of plunder and violence, of cruelty and conflagration, has been committed, except in the immediate presence, under the positive orders, and with the personal agency of British officers. It must not be again insinuated that they were provoked by the American example, because it has been demonstrated that all such insinuations are without colour, and without proof. And after all, the dreadful and disgraceful progress of the British arms will be traced as the effect of that animosity arising out of recollections connected with the American revolution, which has already been noticed; or, as the effect of that jealousy which the commercial enterprize and native resources of the United States are calculated to excite in the councils of a nation, aiming at universal dominion upon the ocean.

In the month of April, 1813, the inhabitants of Poplar island, in the bay of Chesapeake, were pillaged; and the cattle and other live stock of the farmers, beyond what the enemy could remove, were wantonly killed *.

In the same month of April, the wharf, the store, and the fishery, at Frenchtown landing, were destroyed, and the private stores and storehouses in the village of French town, were burnt †.

In the same month of April, the enemy landed repeatedly on

* See the deposition of Wm. Sears.

† See the depositions of Frisby Anderson and Cordelia Pennington.

Sharp's Island, and made a general sweep of the stock, affecting, however, to pay for a part of it *.

On the 3d of May, 1813, the town of Havre de Grace was pillaged and burnt, by a force under the command of Admiral Cockburn. The British officers being admonished, "that with civilized nations at war, private property had always been respected," hastily replied, "that as the Americans wanted war, they should now feel its effects, and that the town should be laid in ashes." They broke the windows of the church; they purloined the houses of the furniture; they stripped women and children of their clothes; and when an unfortunate female complained that she could not leave her house with her little children, she was unfeelingly told "that her house should be burnt with herself and children in it †."

On the 6th of May, 1813, Fredericktown and Georgetown, situated on Sassafras river, in the state of Maryland, were pillaged and burnt, and the adjacent country was laid waste, by a force under the command of admiral Cockburn, and the officers were the most active on the occasion ‡.

On the 22d of June, 1813, the British forces made an attack upon Craney Island, with a view to obtain possession of Norfolk, which the commanding officers had promised, in case of success, to give up to the plunder of the troops §. The British were repulsed; but enraged by defeat and disappointment, their course was directed to Hampton, which they entered on the 23d of June. The scene that ensued exceeds all power of description; and a detail of facts would be offensive to the feelings of decorum, as well as of humanity. "A defenceless and unresisting town was given up to indiscriminate pillage; though

* See Jacob Gibson's deposition.

† See the deposition of William T. Killpatrick, James Wood, Rosanna Moore, and R. Mansfield.

‡ See the depositions of John Stavely, William Spencer, Joshua Ward, James Scanlan, Richard Barnaby, F. B. Chandlear, Jonathan Greenwood, John Allen, T. Robertson, M. N. Cannon, and J. T. Veary.

§ See General Taylor's letter to the secretary at war, dated the 9d of July, 1813.

civilized war tolerates this only as to fortified places carried by assault, and after summons. Individuals, male and female, were stripped naked; a sick man was stabbed twice in the hospital; another sick man was shot in his bed, and in the arms of his wife, who was also wounded, long after the retreat of the American troops; and females, the married and the single, suffered the extremity of personal abuse from the troops of the enemy, and from the infatuated negroes, at their instigation *." The fact that these atrocities were committed, the commander of the British fleet, Admiral Warren, and the commander of the British troops, Sir Sidney Beckwith, admitted, without hesitation †; but they resorted, as on other occasions, to the unworthy and unavailing pretext of a justifiable retaliation. It was said, by the British general, "that the excesses at Hampton were occasioned by an occurrence at the recent attempt upon Craney Island, when the British troops in a barge, sunk by the American guns, clung to the wreck of the boat; but several Americans waded off from the island, fired upon, and shot these men." The truth of the assertion was denied: the act, if it had been perpetrated by the American troops, was promptly disavowed by their commander; and a board of officers appointed to investigate the facts, after stating the evidence, reported an unbiased opinion, that the charge against the American troops was unsupported; and that the character of the American soldiery for humanity and magnanimity had not been committed, but on the contrary con-

* See the letters from General Taylor to admiral Warren, dated the 29th of June, 1813; to general Sir Sidney Beckwith, dated the 4th and 5th of July, 1813; to the secretary of war, dated the 2d of July, 1813; and to Captain Myers, of the last date.

See also the letter from Major Crutchfield to Governor Barbour, dated the 20th of June, 1813; the letters from Captain Cooper to Lieutenant-governor Mallory, dated in July, 1813; the report of Messrs. Griffin and Lively to Major Crutchfield, dated the 4th of July, 1813; and Colonel Parker's publication in the Enquirer.

† See Admiral Warren's letter to General Taylor, dated the 29th of June, 1813; Sir Sidney Beckwith's letter to General Taylor, dated the same day; and the report of Captain Myers to General Taylor, of July 2, 1813.

firmed *." The result of this enquiry was communicated to the British general; reparation was demanded; but it was soon perceived, that whatever might personally be the liberal dispositions of that officer, no adequate reparation could be made, as the conduct of his troops was directed and sanctioned by his government †.

During the period of these transactions, the village of Lewistown, near the capes of the Delaware, inhabited chiefly by fishermen and pilots, and the village of Stonington, seated upon the shores of Connecticut, were unsuccessfully bombarded. Armed parties, led by officers of rank, landed daily from the British squadron, making predatory incursions into the open country; rifling and burning the houses and cottages of peaceable and retired families; pillaging the produce of the planter and the farmer; (their tobacco, their grain, and their cattle;) committing violence on the persons of the unprotected inhabitants; seizing upon slaves, wherever they could be found, as booty of war; and breaking open the coffins of the dead, in search of plunder, or committing robbery on the altars of a church at Chaptico, St. Inagoes, and Tappahannock, with a sacrilegious rage.

But the consummation of British outrage yet remains to be stated, from the awful and imperishable memorials of the capital at Washington. It has been already observed, that the massacre of the American prisoners at the river Raisin, occurred in January, 1813; that throughout the same year the desolating warfare of Great Britain, without once alleging a retaliatory excuse, made the shores of the Chesapeake, and of its tributary rivers, a general scene of ruin and distress; and that in the month of February, 1814, Sir G. Provost himself acknowledged, that the measures of retaliation, for the unauthorized burning of Newark, in December, 1813, and for all the excesses which had been imputed to the American army, was, at that time, full and complete. The United States, indeed, regarding what

* See the report of the proceedings of the board of officers, appointed by the general order, of the 1st of July, 1813.

† See general Taylor's letter to Sir Sidney Beckwith, dated the 5th of July, 1813; and the answer of the following day.

was due to their own character, rather than what was due to the conduct of their enemy, had forbore to authorize a just retribution: and even disdained to place the destruction of Newark to retaliatory account, for the general pillage and conflagration which had been previously perpetrated. It was not without astonishment, therefore, that after more than a year of patient suffering, they heard it announced in August, 1814, that the towns and districts upon their coast, were to be destroyed and laid waste, in revenge for unspecified and unknown acts of destruction, which were charged against the American troops in Upper Canada. The letter of Admiral Cochrane was dated on the 18th, but it was not received until the 31st of August, 1814. In the intermediate time, the enemy debarked a body of about five or six thousand troops at Benedict, on the Patuxent, and by a sudden and steady march through Bladensburg, approached the city of Washington.—This city has been selected for the seat of the American government; but the number of its houses does not exceed nine hundred, spread over an extensive scite; the whole number of its inhabitants does not exceed eight thousand; and the adjacent country is thinly populated. Although the necessary precautions had been ordered, to assemble the militia, for the defence of the city, a variety of causes combined to render the defence unsuccessful; and the enemy took possession of Washington on the evening of the 24th of August, 1814. The commanders of the British force held at that time Admiral Cochrane's desolating order, although it was then unknown to the government of the United States; but conscious of the danger of so distant a separation from the British fleet, and desirous, by every plausible artifice, to deter the citizens from flying to arms against the invaders, they disavowed all design of injuring private persons and property, and gave assurances of protection, wherever there was submission: General Ross and Admiral Cockburn then proceeded in person to direct and superintend the business of conflagration; in a place, which had yielded to their arms, which was unfortified, and by which no hostility was threatened. They set fire to the capital, with-

in whose walls were contained the halls of the congress of the United States, the hall of their highest tribunal for the administration of justice, the archives of the legislature, and the national library. They set fire to the edifice which the United States had erected for the residence of their chief magistrate. And they set fire to the costly and extensive buildings erected for the accommodation of the principal officers of the government, in the transactions of the public business. These magnificent monuments of the progress of the arts, which America had borrowed from her parent Europe, with all the testimonials of taste and literature which they contained, were, on the memorable night of the 24th of August, consigned to the flames, while British officers of high rank and command, united with their troops in riotous carousal, by the light of the burning pile.

But the character of the incendiary had so entirely superseded the character of the soldier, on this unparalleled expedition, that a great portion of the munitions of war, which had not been consumed when the navy yard was ordered to be destroyed upon the approach of the British troops, were left untouched; and an extensive foundry of cannon adjoining the city of Washington, was left uninjured; when, in the night of the 25th of August, the army suddenly decamped, and returning with evident marks of precipitation and alarm, to their ships, left the interment of their dead, and the care of their wounded, to the enemy, whom they had thus injured and insulted, in violation of the laws of civilized war.

The counterpart of the scene exhibited by the British army, was next exhibited by the British navy. Soon after the midnight flight of General Ross from Washington, a squadron of British ships of war ascended the Potomac, and reached the town of Alexandria on the 27th of August, 1814. The magistrates presuming that the general destruction of the town was intended, asked on what terms it might be saved. The naval commander declared, "that the only conditions in his power to offer," were such as not only required a surrender of all naval

and ordnance stores, (public and private,) but of all the shipping; and of all the merchandize in the city, as well as such as had been removed since the 19th of August. The conditions, therefore, amounted to the entire plunder of Alexandria, an unfortified and unresisting town, in order to save the buildings from destruction. The capitulation was made; and the enemy bore away the fruits of his predatory enterprise in triumph.

But even while this narrative is passing from the press, a new retaliatory pretext has been formed, to cover the disgrace of the scene, which was transacted at Washington. In the address of the governor in chief to the provincial parliament of Canada, on the 24th of January, 1815, it is asserted, in ambiguous language, "that, as a just retribution, the proud capital at Washington has experienced a similar fate to that inflicted by an American force *on the seat of government* in Upper Canada." The town of York, in Upper Canada, was taken by the American army under the command of General Dearborn, on the 27th of April, 1813*; and it was evacuated on the succeeding 1st of May; although it was again visited for a day by an American squadron, under the command of Commodore Chauncey, on the 4th of August†. At the time of the capture, the enemy on his retreat set fire to his magazine, and the injury produced by the explosion was great and extensive; but neither then, nor on the visit of Commodore Chauncey, was any edifice, which had been erected for civil uses, destroyed by the authority of the military or the naval commander; and the destruction of such edifices by any part of their force, would have been a direct violation of the positive orders which they had issued. On both occasions, indeed, the public stores of the enemy were authorised to be seized, and his public storehouses to be burnt; but it is known that private persons, houses, and property, were left uninjured. If, therefore, Sir George Prevost deems such acts

* See the letters from General Dearborn to the secretary of war, dated the 27th and 28th of April, 1813.

† See the letter from Commodore Chauncey to the secretary of the navy, dated the 4th of August, 1813.

inflicted on "the seat of government in Upper Canada," similar to the acts which were perpetrated at Washington, he has yet to perform the task of tracing the features of similarity; since at Washington the public edifices, which had been erected for civil uses, were alone destroyed, while the munitions of war, and the foundries of cannon, remained untouched.

If, however, it be meant to affirm, that the public edifices, occupied by the legislature, by the chief magistrate, by the courts of justice, and by the civil functionaries of the province of Upper Canada, with the provincial library, were destroyed by the American force, it is an occurrence which has never been before presented to the view of the American government by its own officers, as a matter of information; nor by any of the military or civil authorities of Canada, as matter of complaint: it is an occurrence which no American commander had in any degree authorised or approved; and it is an occurrence which the American government would have censured and repaired with equal promptitude and liberality.

But a tale told thus out of date, for a special purpose, cannot command the confidence of the intelligent and the candid auditor; for, even if the fact of conflagration be true, suspicion must attend the cause for so long concealment, with motives so strong for an immediate disclosure.—When Sir George Prevost, in February, 1814, acknowledged, that the measure of retaliation was full and complete for all the preceding misconduct imputed to the American troops, was he not apprized of every fact which had occurred at York, the capital of Upper Canada, in the months of April and August, 1813; yet, neither then, nor at any antecedent period, nor until the 24th January, 1815, was the slightest intimation given of the retaliatory pretext which is now offered. When the Admirals Warren and Cochrane were employed in pillaging and burning the villages on the shores of the Chesapeake, were not all the retaliatory pretexts for the barbarous warfare known to those commanders? And yet, "the fate inflicted by an American force on the seat of government in Upper Canada," was never suggested in justification or excuse! and, finally, when the expe-

dition was formed, in August, 1814, for the destruction of the public edifices at Washington, was not the "similar fate which had been inflicted by an American force on the seat of government in Upper Canada," known to admiral Cochrane, as well as to Sir George Prevost, who called upon the admiral (it is alleged) to carry into effect, measures of retaliation against the inhabitants of the United States?—And yet, both the call and the compliance are founded, not upon the destruction of the public edifices at York, but upon the wanton destruction committed by the American army in Upper Canada, upon the inhabitants of the province, for whom alone reparation was demanded.

An obscurity, then, dwells upon the fact alleged by Sir George Prevost, which has not been dissipated by inquiry. Whether any public edifice was improperly destroyed at York, or at what period the injury was done, if done at all, and by what hand it was afflicted, are points that ought to have been stated when the charge was made. Surely it is enough, on the part of the American government, to repeat that the fact alleged was never before brought to its knowledge for investigation, disavowal, or reparation. The silence of the military and civil officers of the provincial government of Canada, indicates, too, a sense of shame, or a conviction of the injustice of the present reproach.—It is known that there could have been no other public edifice for civil uses destroyed in Upper Canada, than the house of the provincial legislature, a building of so little cost and ornament, as hardly to merit consideration; and certainly affording neither parallel nor apology for the conflagration of the splendid structures which adorned the metropolis of the United States.—If, however, that house was indeed destroyed, may it not have been an accidental consequence of the confusion in which the explosion of the magazine involved the town? Or, perhaps, it was hastily perpetrated by some of the enraged troops in the moment of anguish for the loss of a beloved commander, and their companions, who had been killed by that explosion, kindled as it was by a de-

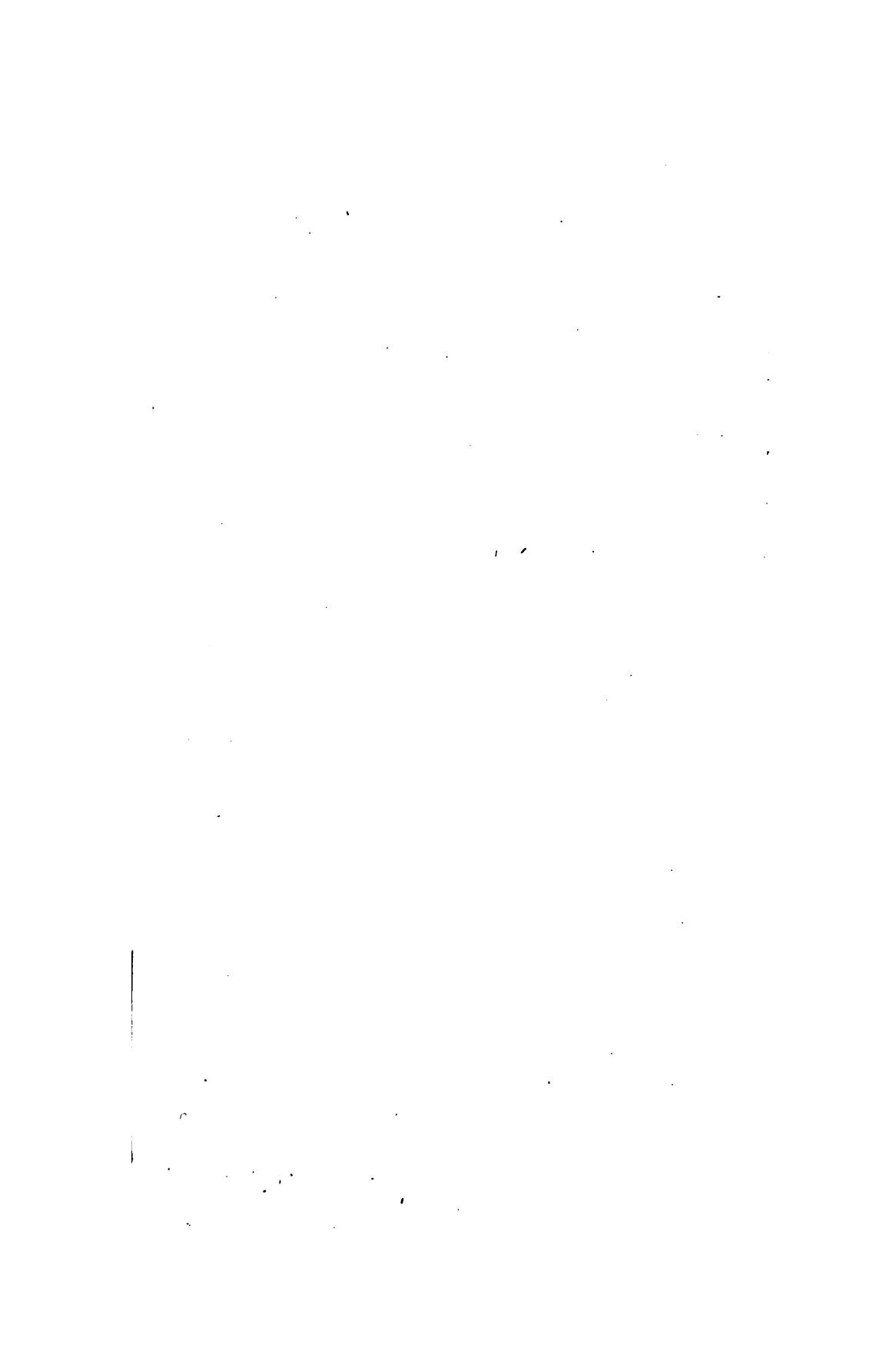
feated enemy, for the sanguinary and unavailing purpose: Or, in fine, some suffering individual, remembering the slaughter of his brethren at the river Raisin, and exasperated by the spectacle of a human scalp, suspended in the legislative chamber, over the seat of the speaker, may, in the paroxysm of his vengeance, have applied, unauthorized and unseen, the torch of vengeance and destruction.

Many other flagrant instances of British violence, pillage, and conflagration, in defiance of the laws of civilized hostilities, might be added to the catalogue which has been exhibited; but the enumeration would be superfluous, and it is time to close so painful an exposition of the causes and character of the war.

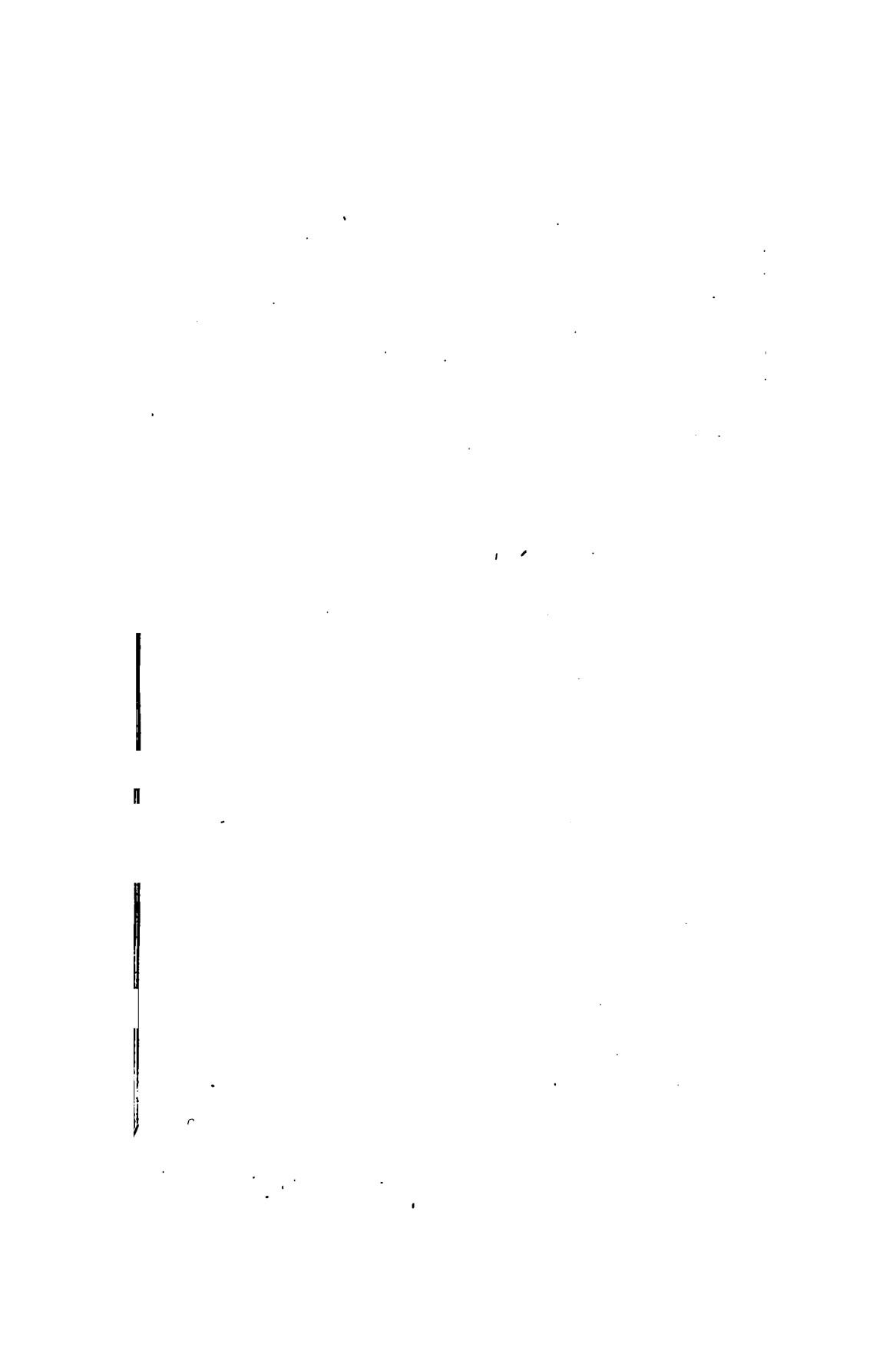
The exposition had become necessary to repel and refute the charges of the prince regent, when, by his declaration of January, 1813, he unjustly states the United States to be the aggressors in the war; and insultingly ascribes the conduct of the American government, to the influence of French councils. It was also necessary to vindicate the course of the United States, in the prosecution of the war; and to expose to the view of the world, the barbarous system of hostilities which the British government has pursued. Having accomplished these purposes, the American government recurs, with pleasure, to a contemplation of its early and continued efforts, for the restoration of peace. Notwithstanding the pressure of the recent wrongs, and the unfriendly and illiberal disposition which Great Britain has at all times manifested towards them, the United States have never indulged sentiments incompatible with the reciprocity of good will, and an intercourse of mutual benefit and advantage. They can never repine at seeing the British nation great, prosperous, and happy; safe in its maritime rights, and powerful in its means of maintaining them; but, at the same time, they can never cease to desire that the councils of Great Britain should be guided by justice and a respect for the equal rights of other nations.—Her maritime power may extend to all the legitimate objects of her sovereignty and her commerce, without endangering the independence and peace of every other government. A

balance of power, in this respect, is as necessary on the ocean as on the land; and the control that it gives to the nations of the world, over the actions of each other, is as salutary in its operation to the individual government which feels it, as to all the governments, by which, on the just principles of mutual support and defence, it may be exercised. On fair, and equal, and honourable terms, therefore, peace is at the choice of Great Britain; but if she still determine upon war, the United States reposing upon the justness of their cause; upon the patriotism of their citizens; upon the distinguished valour of their land and naval forces; and, above all, upon the dispensations of a benevolent Providence, are ready to maintain the contest, for the preservation of the national independence, with the same energy and fortitude, which were displayed in acquiring it.

WASHINGTON, *February 10, 1815.*









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Introduction.

THE exigencies of the State, for supporting the present war, requiring a productive revenue of no common nature, either in extent or operation, a Tax upon Property was adopted, with the intent that every individual deriving benefit from the exertions of the Government should contribute a share towards the public expenditure. With this view, the Sovereign as well as the Subject is taxed; for every property, held by others and belonging to His Majesty, is charged with the same rate of duty, for him to allow, as that of the smallest land-owner; and where the income of the humble individual, arising from the occupation of land or profits, can be shewn to be under £150. per year, a very considerable abatement is made in the tax, and a total exemption if under £50. It is to be observed also, that it is only during the calamitous burthens necessarily attendant upon war, that the law exacting this duty is to remain in force; the very title of the Act declaring it to be so only

"until the 6th day of April after the ratification of a definitive treaty of peace."

For the purpose of adapting the provisions of such an Act of Parliament to the case of every individual, it necessarily became voluminous, and not easy to be thoroughly understood, without more than ordinary application. Having been professionally employed for many months in extricating more than 150 persons from the consequences of wrong constructions thereof, upon whom Fines, Penalties, and Double Duties had been improperly laid, to the amount of nearly £2000. a great portion of my time has consequently been devoted to the study of this important branch of English Jurisprudence, and I trust not only to the benefit of those already relieved by my interference, (supported by the kind assistance of the Right Honourable C. BATHURST, M. P. Sir B. W. GUISE, Bart. M. P. and R. H. DAVIS, Esq. M. P.) but to the advantage of others who might otherwise be in a similar predicament.

A strong impression exists in the minds of the Honourable Board of Taxes, from information conveyed to them, that *insufficient* returns are very prevalent, and therefore at first they with the less readiness listened to the applications I recently found occasion to make; but I have at the same time to bear true and honorable testimony to their willingness to hear the

remonstrances of aggrieved persons who may have erred from ignorance rather than design, and to hasten the means of their relief.

Some cases of returns evidently fraudulent have come under my notice, but I am happy to say that such have not been general ; it is therefore an object of my warmest solicitude to be instrumental in relieving the considerable body of yeomanry, &c. for whom I have lately been concerned, in the estimation of the Commissioners of the District and of the Tax-Office, from the odium cast upon the *community at large*, in consequence of the fraudulent practices of a few, by submitting the following sheets to their perusal ; which I trust will prove an infallible guide in future, for making correct returns of their income.

The effect of one person making a *short* return, while his neighbour, more conscientious, states his full income, is, that one no less under the protection of the Government, if successful in the evasion, pays much less, proportionally, than the other, for that protection ; the consideration of which, by any well-meaning man, should be sufficient to deter him from such an attempt.

As every individual, subject to this tax, must occasionally have intercourse with the Officers concerned, it may not be amiss to take a

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cursory view of their appointments and powers.
In the first place, the

COMMISSIONERS

Are of the highest order, qualified by independent property, and selected from the most intelligent part of the community among whom they reside ; whose province it is, without fee or reward (their arduous services being gratuitous) to act, upon oath, in the election of Officers for the due execution of the Act, viz. Clerks, Assessors, and Collectors ; and afterwards in allowing or amending the Assessments and charging the Duties accordingly, subject to Appeal and Surcharge ; which is a matter of so much consequence to the Public, that none except men of enlightened minds, close application and unshaken integrity, are fit for the office ; for they are in fact *Judges* between the Crown and the Subject, presumed to possess (as they doubtless should) a thorough knowledge of that branch of the law, the more especially as the Appellate Jurisdiction itself exclusively belongs to those very Commissioners who had previously made the Assessments—a trust unquestionably of the highest importance, and therefore requiring in its execution the utmost disinterestedness, impartiality, and discretion. Their

CLERKS

Are also (under an oath and allowance from Government) to summon the other Officers to attend the Commissioners, and by themselves or Assistants to write the Assessments, Warrants, Schedules of Discharge and Defaulters, Certificates and Duplicates ; and they are not to demand or receive any fee, gratuity or perquisite, for any matter done by them under the authority of the Act, from any other person than the Receiver-General or his Deputy, or otherwise misconduct themselves, on pain of forfeiting £100. and being dismissed from office,

ASSESSORS

Are appointed out of the Parishes, to deliver Notices for making Returns of Income, and to receive such returns and examine them, and make Estimates themselves in some cases, and assess persons in additional sums (under an oath of office) if they see occasion ; and to serve other Notices and attend Commissioners when required ; for which they receive an allowance from Government, but are subject to heavy penalties for neglect of duty, &c.

COLLECTORS

Are also chosen from amongst the Parishioners

in general, with similar allowance and under oath, also giving security if required ; whose duty it is to demand the sums against the parties within Ten Days after receiving the Assessments ; and if payment be refused, to distrain, by virtue of their Warrants, upon the Lands and Tenements, Goods and Chattels of the Defaulters ; and if the duties are not recovered within two months after becoming payable, and paid over in course, the Parish is answerable for such deficiencies—a circumstance which, if more generally known, would stimulate the Public to encourage a prompt discharge of duty in those useful Officers, instead of cherishing the idea, which so much prevails, of their being too importunate in their demands.

Collectors are subjected also to heavy Penalties, equally with the Assessors, for neglect of duty ; which weighty point, if duly considered, would additionally incline persons to be less backward in paying the taxes fairly due when called upon, and prevent being called upon a second time, by sending the amounts to the Collector's house, if not paid upon a first application ; particularly as the pecuniary allowance to that denomination of officers is by no means adequate to reiterated calls ; and my object in this explanation is justly to reconcile the Public at large to what is unavoidable (without incurring considerable risk) and to retrieve,

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as is due, the name of Collector from unmerited imputations too frequently cast upon it.

SURVEYORS AND INSPECTORS

Are Crown-Officers, appointed by the Lords of the Treasury, with salaries. There are 300 Surveyors and 42 Inspectors for the whole kingdom, with adequate powers (under oath of office), to examine Returns and Estimates, and Assessments made by the Parish-Officers, and rectify the same, or object thereto and make Surcharges, subject nevertheless to a penalty of £50. for wilfully making any vexatious surcharge, &c. and of £100. and dismissal from office for malpractices. The proceedings of both Surveyors and Inspectors are under the controul and revision of

INSPECTORS GENERAL;

Of whom there are ten in the kingdom, invested with competent powers for the purpose, and also appointed by the Treasury. The last head of Officers is that of

RECEIVERS GENERAL,

Likewise appointed for the several Districts

throughout the kingdom, who are, at stated times, by themselves or Deputies, to receive from the Collectors the monies collected by them for Duties, and to pay the same into His Majesty's Exchequer,

PLAIN DIRECTIONS, &c.

CHAP. I.

To all Persons rated, of whatever description.

AS the term SCHEDULE so often occurs in the execution of the Property-Act, and the sense thereof is so little known through the country, I beg leave to premise, that in the present application it is another word for PART; so that for Schedule A. B. C. D. E. and F. appearing throughout the Act, might as aptly have been used, Part 1, 2, 3, 4, 5, and 6, as conveying the same meaning.

One reason however for the use of the word Schedule in that particular, may be the use of the word Part in the Tax-Office in various other respects, and in a prominent degree at the left-hand upper corner of each of the four printed papers delivered for Returns of Property and Profits, viz. "No. 5, 1st Part"—"No. 5, 2d Part"—"No. 5, 3d Part," and "No. 5, 4th Part."

You are to bear in mind that the Tax-Office Forms are printed to answer *every* possible case; as it cannot be known, until the re-

turns are actually made, to what peculiar Parts thereof such returns are applicable. It necessarily follows, therefore, that *every* description of form for the purpose must be submitted to *each* person ; and this being considered, it may be wondered that, with every attention to conciseness of language, so much could be compressed within so small a compass. Should the printed columns, however, be too contracted for any particular Return, the party is at liberty to use a *manuscript* form, to comprise the whole of the case.

Taking the printed Forms *in the order* in which they are marked as above, with 1, 2, 3, and 4, at the left-hand upper corner of each, I would recommend their being pinned together and reviewed in the same order, for the purpose of making the Return.

That being done, the party will observe that the first page of such first paper, and part of the second page, require the *Names and Places of Residence of LODGERS and SERVANTS, of both sexes, residing in and out of his dwelling-house*; wherewith most persons assessed necessarily have to do, by keeping one or more servants, whether lodgers are with them or not; but as far as it does NOT apply to the case in question, of course it should be passed over, leaving the columns in blank. The reason of such Return of Names being required is, in order to the Assessors immediately giving those persons also similar Notices for their respective Returns. Then follow columns for the *Names of any Persons for whom the party making the Return acts as TRUSTEE, AGENT, &c.* and who are treated of under their proper heads in Chap. XII. But if the party does not act for any other Person or Corporation in either of

those capacities, he has only to pass them by, also without further notice.

He must at all events subscribe his Name at the bottom of the second side thereof, opposite the word "Signed."

We then come to the Form "No. 5, 2d Part," relating to *Landed Property* under Schedules A. and B.; and if the party comes under any or either of the descriptions embraced by the eight succeeding Chapters, he will find therein minute instructions for his guidance. In this class of persons he must be included, if only a Householder; but should he be a Tradesman, living in lodgings, without holding any house or land, he will have to turn over that paper also without further remark.

Next in order comes "No. 5, 3d Part," under Schedules D. and E.; which, if the party be at all concerned in any Trade, Business, or Profession, for profit in any manner whatsoever, applies closely to his case, and must be carefully filled up according to the directions of Chap. X. and XII. or such of them as may meet the case.

The last of the four papers, viz. "No. 5, 4th Part," relates only to Exemptions and Allowances for limited Incomes arising from Profits, and is fully treated of in Chap. XIII. Should the party's income of that description be above £150, per ann. of course he can claim no exemption or abatement, therefore has nothing to do with this paper; but if under that sum, the greatest care must be observed to make the claim *in writing*, at the time of making the return of the income, or it will not be in the power of the Commissioners to grant it. At all events I would not advise the papers being unpinned again, but sent back to the Assessor or Commissioners.

together, whether all written upon or not, as shewing that neither has passed unobserved.

All parties should be very particular in making the Returns *in time*, because otherwise they are exposed to Double Duties and Penalties for not doing so; and they must be no less mindful to attend the Commissioners when required to support their returns; as the same amount of penalties and double duties might be the consequence of neglect, but with the privilege to the party of amending such returns in any particular, before law-proceedings commence.

Another general provision with which it is proper that all parties should be acquainted, is, that on changing their Residence and being served with Notices for Returns, it is incumbent upon them to declare where they are charged, or duly make a Return for the purpose of being assessed, under a penalty for neglect. If any Resident remove from a District without first discharging all arrears of duty or leaving sufficient goods to satisfy the same, he or she will forfeit £20. Distress to take place for the whole at the new residence; and the deficiency (if any) to be a debt to His Majesty on record.

If any sum for Property-Duty shall be paid by mistake and not included in any assessment or charge, the same will be refunded upon application by certificate obtained from the Honourable Board of Taxes, presiding at the Tax-Office, Somerset-House, London, and constituted for all Affairs of the three Departments of Taxes, viz. Assessed-Taxes, Land-Tax, and Property-Tax.

It is also provided that no payment of duty under the Property-Act shall entitle the party to a settlement in the parish.

CHAP. II.

*To Owners of Houses, Lands, &c. under
Schedule A.*

IF you are the Owner AND Occupier of any Houses, Lands or other Tenements, you are charged with £10 per cent. or 2s. in the pound on the actual annual value thereof, *as Owner*, and 1s. 6d. in the pound *as Occupier*, if in England, or 1s. in Scotland; and you are to write the description of such property in the first division of "No. 5, 2d Part," under the following title: "No. 1. Lands and Tenements"—the name of the Parish or Parishes in which it lies in the first column—the word *myself* in the second column, once or more, as may be necessary—*Farm-House and Land*, inserted in the third column, if that description will answer to the Property, by the Farm-House being held for the sole purpose of the Farm. Or use the term *Dwelling-House*, or whatever other words will give the most exact description thereof. With the next column you, of course, have no thing to do; but in the fifth you must fairly and conscientiously insert such Sum or Sums (in figures) as the Estate or Estates are worth to be let at rack (or full) rent by the year, supposing the Tenant to pay the taxes usual for Tenants to pay.

In the sixth column must be set down the Composition or Compositions for Tythes (if

there be any) according to the nature of the case; otherwise pass over that column, and in the next, viz. the seventh, set down the Amount or Amounts of Land-Tax payable out of the property, but *not* either the word "Landlord" or "Tenant," as necessary in the case of a letting, because of course there can be only yourself, as Owner in possession, to pay it.

If the property be so situate as to be under the controul of any public rate for Drainage, Embankments, or Fencing, you should set down in the eighth column the Amount or Amounts (in figures) of any money paid within the last preceding year on account thereof; but if the estate be not so circumstanced, this column is to be left blank.

For the sums in these two last columns you are entitled to a proportionate Deduction from the amount of the duty on the annual value These constitute the only general deductions in respect of *ownership* which the Act allows, and cannot be allowed unless claimed *in writing* upon the present Return.

If the estate be Tythe-free, you have to write *Tythe-free* in the ninth and last column. If it be partly tythe-free and partly tythable, insert the Proportions (in figures) and of course the Amount of any Modus or Moduses, if any be payable. The purpose hereof is to obtain a deduction of one-eighth from the whole Tax, in respect to the *occupation*, which you are entitled to for all Tythe-free Lands; the Legislature having considered that the estate is worth one-eighth more by reason of its being so tythe-free.

All the rest of this paper (unless you can be classed under the heads of any of the following Chapters of this book) may be passed over by you without attention, except the "General

Declaration" at the bottom of the second side thereof, in which you are to insert your name after the pronoun personal, "I," at the beginning, as well as opposite the word "Signed" at the termination.

If you are *not* the Occupier as well as Owner of your estate, you have nothing to do with this paper, it remaining with your Tenants to do every thing that may be necessary therein.

If your Estates lie in more than one Parish, you are required, on pain of paying Double Duty for default, besides the other Penalty of 20*l.* to make the like Return in *each* Parish; but the property is chargeable in the Parish where situate, unless the proportions payable in each cannot be well ascertained; in which case the Commissioners have discretion to charge the whole in either Parish, if all the property be within the same District of Commissioners; otherwise they will charge where you reside.

If you possess a Dwelling-House or other premises that are let, of less annual value than £10. or let for a less period than one year, of whatever value, the Commissioners may make the Assessment upon yourself, but so as not to prevent the recovery of the duty from the Occupier, in case of your failing to pay it.

If you own, or receive the rent of any House or Tenement occupied by any accredited Minister for any Foreign Prince or State, the duty is to be charged upon and paid by you.

After allowing the Landlord's Duty of 2*s.* in the pound, to the Tenants of such of you as have any, out of their next succeeding rent; (which must be allowed under a penalty of £50.) &c. you may deduct the same rate of duty for any Rent-Charge, Annuity, Fee-Farm Rent, Rent-Service, Quit-Rent, Feu-Duty, Tiend-

sustained, in the same manner as if let to a Tenant, and as if a proportionate abatement had or ought to have been made to such Tenant out of his rent, under the circumstances of the loss; but any person making a false claim is subject to a penalty of £50. and treble the amount of duty charged; and any one aiding or assisting is liable to the forfeiture of £100.

CHAP. III.

To Occupiers of Lands, &c. under Schedule B.

YOU, as Occupier, are chargeable with 1s. 6d. in the pound, if in England, and 1s. if in Scotland; but the Landlord's Tax is also chargeable upon you, the amount of which you are empowered to deduct from the amount of rent on your next payment.

If your tenancy has been at the same rent for more than seven years without being determined by legal notice, you are to fill up the first division of paper "No. 5, 2d Part," under the following title, "No. 1. Lands and Tenements," by inserting in the first column the name of the Parish or Parishes in which the estate or estates lie. In the second column, the name of your Landlord or Landlords, once or more as may be necessary to point out the Landlord of each. "Farm-House and Land" in the third column, if that description will answer to the property, by the farm-house being held for the sole purposes of the farm; or else use the word "Dwelling-House," or whatever other words will give the most exact description thereof, adding "by Lease in writing" or "by Agreement in writing" if so, and the day and year of its date, in figures.

In the next column you will put the exact Rent you pay, in figures, and in the next or

fifth, the actual Annual Value of the property for which it would at the time let to any Tenant at a rack (or full) rent by the year, supposing the Tenant to pay his usual taxes. This is a trying circumstance to a Tenant, because, if the property be under-let, his Landlord's eyes are thereby opened as to how much it is so under-let; but nevertheless, as the law requires such a return, in order that all lands may be charged *equally*, it ought to and must be so made. In the sixth column must be set down the Composition or Compositions for Tythes (if any be payable) according to the nature of the case, otherwise pass over that column; and in the next, viz. the seventh, the Amount or Amounts (in figures) of the Land-Tax payable out of the property, writing the word *Landlord* or *Tenant* under the sum, as the party paying the Land-Tax; because, if paid by yourself, it is, in the Estimate of your Rent, to be added to the rent, the same in fact forming in that case an addition thereto, though under another name; but if the Land-Tax be paid by the Landlord, he is entitled to a rateable deduction for it out of his Property-Tax.

If any sum or sums be payable by you or your Landlord under any public rate for Drainage, Embankments, or Fencing, you will put down the amount thereof (in figures) paid within the last year, in the next or eighth column; and also the word *Landlord* or *Tenant* under the sum, as required with respect to the Land-Tax, and for the same reason.

For the sums in these two last columns your Landlord is entitled to a proportionate deduction from the amount of duty on the annual value, and these form the only general deductions *in respect of the ownership* that the Act allows,

and which cannot be allowed unless claimed *in writing* upon the present Return.

If the estate be tythe-free, you have to write the word **Tythe-free** in the tenth and last column; if partly Tythe-free and partly Tytheable, insert the Proportions (in figures) and of course the Amount (in figures) of any Modus or Moduses, if any be payable.

The reason for this is, that you may be allowed a deduction of one eighth from your whole Taxes as Occupier; all Tythe-free Lands giving a title to such deduction; the Legislature considering that an estate is worth one eighth more by being tythe-free. But then, in making your Estimate of the Annual Value thereof, you must calculate it as being Tythe-free.

If your Tenancy has commenced within seven years, you are to fill up the division of the same paper under the title "No. 2, Lands and Tenements occupied, &c." by following the above directions so far as may concern the first, second, third, and fourth columns. The fifth column you have nothing to do with; but the sixth, seventh, eighth, and ninth you are to fill up also as above directed, the cases being in every respect similar. All the rest of this paper (unless you can be classed under the heads of any of the following Chapters of this book) may be passed over by you without attention, except the "General Declaration" at the bottom of the second page thereof, in which you are to insert your name opposite the prounoun personal "I," at the beginning, as well as opposite the word "signed" at the end.

All properties subject to the Landlord's Duty are chargeable where situate, except in a few peculiar places, which are named, and except held under the same demise (or lease), or in the

occupation of the same person as Owner ; in which case, although situate in different Parishes, the property may be charged in either Parish, at the discretion of the Commissioners, should they be satisfied that the Proportion in each Parish, in respect of quantity, rent or value, cannot be ascertained,—and also in case the whole property shall be in the same District ; but if it lie in different Districts, then the Assessment will be made where the Occupier resides. And all Lands occupied by the same Tenant shall be brought into *every* account thereof required from him, whether under one or more distinct Owners, or shall be situate in the same or in different Parishes or Districts ; but the charge thereon will be in each Parish or District, in proportion to the value of the property therein ; of which proportion the Occupier is required to deliver an account in each Parish wherein any part is situate, and separate accounts, if belonging to distinct Owners.—And if he wilfully omit to deliver such an Account, although he may not reside in one or more of such Parishes, he will be liable (over and above the penalty of £50) to be charged for the Lands so omitted, at double the Rate prescribed by the Act.

As Occupier of the Land, you may, if the Commissioners think fit, be charged for any Composition, Rent or other payment in lieu of Tythes, arising from such Land, or on the respective Persons liable to the payment of such composition, &c. and on your receiving Notices for Returns thereof you are to follow the instructions in Chap. IV. And you are subject to the like penalties and under the same regulations as those which apply to the annual value of the lands,

For any Dwelling-House, Land, &c. occupied by you, of less value than £10. per annum, and for all Lands and Tenements rented by you for a less period than a year, of whatever value, the Commissioners may make the Assessment on your Landlord, but so as not to prevent recovery of the duty from you, in case of his failing to pay it.

The Occupier of any House, Tenement or Apartment belonging to His Majesty, as an Officer under him, in right of his office or otherwise (except apartments in His Majesty's Royal Palaces) to pay the duty according to the annual value.

The Tenants of any Lands, &c. paying the Landlord's Duties, shall deduct the same out of the next payment of rent; and His Majesty's Receivers, and all Landlords whatever, their heirs, executors, &c. according to their respective interests, shall allow the same, upon receiving the Residue of the Rents, under the penalty of £50. for refusal. And the Occupier of any Lands charged on the amount of any Composition, Rent, or payment for Tythes arising therefrom, and paying the duties, shall be entitled to make the like deduction from such composition, rent, &c. on paying the same.

Where any House is divided into distinct Properties, and occupied by distinct Persons, the Duties to be charged on such persons distinctly.

All properties chargeable with the Landlord's Duty of 2s. in the pound, are likewise chargeable with the Tenant's Duty, except a Dwelling-House and its domestic offices which shall not be occupied under the same demise with a Farm of Lands, for the purpose of farming such lands, or with a Farm of Tythes, for the

purpose of farming the same, and except Warehouses or other Buildings occupied for carrying on a Trade or Profession.

And as to Tythe-free Lands in England not subject to any modus, or composition real in lieu thereof, it is provided that there shall be deducted out of the Tenant's Duty a sum not exceeding one eighth part thereof; and where subject to a Modus, &c. and not to Tythes, a deduction from such duty is to be made, of so much thereof as, together with the like rate on such modus, &c. shall not exceed such one eighth. And where the Lands are subject to a Modus, &c. in lieu of certain specific Tythes, and also subject to certain other specific Tythes, or where such Lands are free of certain specific Tythes, and subject to certain other specific Tythes, the Annual Value of such Lands shall, for the purpose of charging the Tenant's Duty, be estimated at the full rent at which the same would let by the year, if wholly free from Tythes, and a deduction made therefrom of one eighth of the Tenant's Duty, as in cases of Tythe-free Lands.

And any Lessee or Occupier of Tythes or Tiends taken in kind, or being the Occupier of Lands from whence the same shall arise, and compounding for the same, is chargeable in respect of the occupation at the rate of 6d. for every 20s. of the annual value thereof, estimated as aforesaid.

Lands occupied as Nurseries or Gardens, for the sale of the produce, or for the growth of Hops, are charged to the Tenant's Duty on the profits of one year, on an average of the three preceding years, by the same rule and at the same rate as other Profits under Schedule D; and when ascertained, are charged with the

duties in Schedule B, as Profits arising from the Occupation of Lands; except when the Hop-Ground shall be part of a Farm held under the same lease, or by the same person as Owner, and shall not exceed one tenth part of such farm; in which case the Tenant's Duty shall be charged together in one sum, as for a Farm.

The Assessment to be in force for a year, and levied on the Occupier, notwithstanding any change in the occupation in the mean time. And every Tenant, his executors or administrators, quitting, are liable to Arrears—and for such further portion of time as may then have elapsed as shall be settled by the Commissioners, to be repaid to the Occupier by whom the same may have been paid; and if quitting before the time of making the Assessment, shall be liable for such portion of the year as shall then have elapsed, to be also settled by the Commissioners.

Where your Landlord is subject to any engagement to allow out of his rent any Parochial Rates, Taxes or Assessments, which by law are a charge on the Occupier (such as the Poor-Rate, the Highway-Rate, the Church and Constables' Rates, and in fact any rate the payment of which would confer a settlement on the party in the parish, as aiding the contributions to which the parish is liable) or any Composition for Tythes, or where any Rector, Vicar, or other person entitled to any rent or other annual payment in lieu of tythes, or any Composition for tythes, shall allow out of the amount thereof all or any such parochial rates, &c. charged on such tythes, &c. the annual value shall be estimated exclusive of such rates, &c, and of such compositions for

Tythes to be computed on the Amount thereof actually and *bona fide* paid by such Landlord, &c. in and for the preceding year.

But where you are subject to any engagement to pay all or any Taxes, &c. payable by Landlords in general, then the Amount thereof *bona fide* paid by you, in and for the year preceding, shall, in making the estimate of the Tenant's Duty, be added to the Rent, in case of the tenancy having commenced within seven years ; and if not, the estimate to be made on the full Annual Value, with the like addition thereto of the amount of such payments.

In cases where the amount of Rent of Lands reserved *in money* depends in the whole or in part on the price of corn or grain, the Estimate for charging the Landlord's Duty must be made on the amount payable according to the average prices or fairs fixed in the year preceding, and in the same manner by which such rents have usually been ascertained between the Landlords and Tenants ; but where a whole or part of the rent is reserved *in corn or grain*, the estimate must be made on the like average price or fair computed on the quantity of corn or grain delivered or to be delivered in the year of assessment ; or where such computation cannot be made, the estimate may be made on the annual value of the lands, according to the general rule under Schedule A ;—and

Where the amount of Rent reserved on Lands, &c. depends on the *actual produce* thereof, either in respect to price or quantity of produce, the estimate for charging the Landlord's Duty must be made on the amount or value of such produce in the year preceding, according to the prices fixed and the quantity produced *in that year*, by the rules and in the manner by

which such rents have usually been ascertained between the Proprietors and their Lessees or Tenants ; and where the prices or fiars in the year of assessment and in the preceding year, or the amount of produce, varies in those years, the Assessment shall on appeal or surcharge be rectified accordingly.

With respect to Scotland, every estimate of such property therein must be made without reference to the Cess or Tax-Roll, or valued rents before used in Scotland, or any stint thereon, and must be made on the full annual value, to the best of the judgment and belief of the Commissioners, Assessors, and others employed in charging the same duties.

Should you, upon due Notice, omit to produce an account in writing of the amount of the annual value of the property in your occupation, or have delivered an account with which the Commissioners are dissatisfied, the Assessors, Inspectors, and Surveyors, throughout Great Britain, having first obtained an order for the purpose, signed by any two or more Commissioners, and taking to their assistance such person or persons of skill as may be named in the order, shall, after two days notice to you, have full power, at all seasonable times of the day, to enter upon, to view and examine all or any lands or other property chargeable, in order to make a survey thereof, or otherwise to ascertain the annual value at which the same ought to be charged, and to measure the same, if they cannot otherwise ascertain the value.

Assessments on Lands and Tenements are to serve for Two Years (if the Act be so long in force) without requiring fresh returns from you in any second year, and without alteration of

names, notwithstanding any change of occupation or interest; and the like sums are payable for the second as for the first year; and the Assessment is subject to the like Exemptions and Allowances for the second as for the first year—unless the Surveyor or Inspector shall discover that any of you have been under-rated, or omitted to be charged in the assessment for the first year, or have obtained an exemption or allowance for the first year which ought not to be allowed for the second year; in which case it is lawful for him to surcharge the assessment for the second year, as explained in a following Chapter upon Surcharges—or unless any person not chargeable in the first year shall become chargeable in the second year; in which case the Assessor, Surveyor or Inspector, is to require the like returns from and to assess him in like manner for the second year, as if the whole assessment of the Parish had commenced in that year—or unless any person shall find himself aggrieved by the continuance, for the second year, of the assessment for the first year, by reason of being over-rated therein; in which case he may appeal from the same in the second year, as instructed in a following Chapter, on Appeals.

In case of any difference arising between you and your Landlord or any other person to whom any interest, rent, rent-charge, or other rent or annual payment is payable, touching the sums to be deducted thereout on account of the duties having been paid—or between you and any *former* Occupier of any messuages, lands, &c. his Executors, &c. touching the proportion of duty to be paid or allowed by either party, any two or more of the Commissioners

are required to settle the proportions of such payments and deductions, according to the Act, and in default of payment to levy the same respectively under the like powers as they might have done if the Assessment had been made in the same proportions, and to pay over the same to the Collector or party who made payment, as the case may require.

No contract, covenant, or agreement between Landlord and Tenant, or any other person, touching the payment of Taxes and Assessments charged or to be charged on their respective premises, can be deemed or construed to extend to the property-duties, nor be binding contrary to the intent and meaning of the Property-Act: but all such duty must be charged upon and paid by the Occupiers, subject to such deductions and repayments by the Landlord as by the Act are authorized and allowed; and all such deductions and re-payments must be made and allowed accordingly, notwithstanding such contracts, covenants, or agreements.

In estimating and assessing Lands held for a longer period than seven years, by any Tenant or Tenants, under a demise from year to year or at will, the Annual Value thereof must be taken, unless you can prove to the satisfaction of the Commissioners that the same are held under a demise which commenced by agreement made and a rent fixed within seven years, on the determination of the former demise thereof, by due notice within that period.

Upon every demise (or lease) for years of Lands situate in any part of Great Britain, in consideration of a Rent reserved, and also of certain Improvements to be made in the lands demised, at your expence, as lessee or tenant,—if it be proved to the satisfaction of the Commissioners

that the rent reserved has been settled on the medium annual value of the lands, computed on an average for the whole term, granted in expectation of the progressive improvement of the farm at such your expence, and that such annual rent is fixed and made payable to the same amount in each year on the said average, whereby the said rent so estimated and made payable exceeds the just annual value of the lands, as the same are worth to be let at rack-rent at the commencement of the term granted by such demise, then the Estimate of the annual value of such lands, and the Assessment there upon, is computed according to the following rules, viz. in regard that the rent reserved was settled on a fair average of the annual value of the lands computed on the whole of the term so granted, the Commissioners in every such case are required, on due proof of the circumstance, to cause the duty payable in respect of the *property* in the lands to be computed and charged on the amount of the rent so reserved for each year of the assessment during the term, without variation, subject to lawful deductions; and also to cause the duty payable in respect to the *occupation* to be computed and charged on the full and just value of the lands, to be ascertained at the time and in the manner hereafter mentioned, viz. On all demises made before the passing of the Act, viz. 20th June 1810, the annual value of the lands is the rack-rent at which the same were worth to be let by the year at the commencement of the first year of assessment after the passing of the Act, by a valuation to be made under the General Rule, to the satisfaction of the Commissioners, and be in force for seven years of assessment, if the demise does not sooner expire; and a like

valuation is to be made every seventh year of assessment during the continuance of the demise; and the amount ascertained by such valuation is deemed to be the rack-rent at which the lands are worth to be let for each period of seven years, if the demise shall not sooner expire; and the assessment thereon is, in each year during the said respective periods of seven years, to be made on the last or preceding valuation. And on all such demises, to be made after such 20th June 1810, the annual value of the lands to be the rack-rent at which the same are worth to be let by the year, to be ascertained at the commencement of the demise by a like valuation, and to be renewed at the end of every seventh year during the demise; and each valuation so made to be in force for seven years, and to govern the assessment to be made in respect to the *occupation* of the said lands, in like manner as before directed.

Whenever by Floods or Tempests any loss is sustained on the growing crops, or on the stock or lands demised to you at a reserved rent, without fine or other sum paid, given, or contracted for in lieu of a reserved rent or any part thereof, or the lands or any part thereof are by such floods or tempests rendered incapable of cultivation for any year, and it shall be proved on oath or solemn affirmation to the Commissioners' satisfaction, that the Owner has, in consideration of such losses, abated or agreed to abate to you the whole or any proportion of the rent reserved for any year of the demise, it is lawful for the Commissioners to abate in the Assessment made in respect of the property for the same year, and to discharge therefrom the whole or the like proportion of duty as the Owner shall appear so to

have abated from his said rent. It is also lawful for the Commissioners in every such case to abate in the Assessment made in respect to the *occupation* for the same year, and to discharge therefrom the like proportion of duty as shall have been abated or discharged from the assessment made in respect of the *property* for the cause aforesaid.

And when from the like cause the like losses shall have been sustained on the lands of any Infant, Idiot, Lunatic, or other Proprietor incapable of consenting to any abatement in the rent as aforesaid, being in your occupation as aforesaid, it is lawful for the Commissioners, on similar proof, to abate in the Assessment made in respect to the *occupation*, and to discharge the whole or any part of the duty,—and in proportion to the losses so sustained, and to the amount which the Commissioners should be of opinion would or ought to have been abated pursuant to the provisions of the last clause if the lands were belonging to a proprietor of full age and sound mind and capable of so consenting; but subject to a penalty of £50. and treble the amount of duty charged, on any person, for making a false claim; and any person aiding or assisting to forfeit £100.

CHAP. IV.

To Lay Proprietors, Lessees, or Tenants receiving Tythes in Kind, or any Payments in Lieu of Tythes.

UNDER the title “No. 1. By every Lay Proprietor, &c.” on the second side of paper “No. 5, 2d Part,” you will find columns for receiving your Returns—the Property of the above description paying £10 per cent. or 2s. in the pound. This division you will observe is subdivided into “1st. Tythes, &c.” “2d. Dues, &c.” and “3d. Composition, &c.” for entries according to the distinct natures of the property.

If yours be of the first description, you will observe to set down in the column intituled “Description of Property, &c.” and opposite to the line, “By any Lay Proprietor, &c.” such Description thereof in the shortest and most appropriate words, and the Name of the Person to be charged, according to the provision of the Act hereafter stated; and in the next column, the full Amount (in figures) of the Profits received of such Tythes taken in kind, on an average of the three preceding years.

If your Property be of the second Description, you will observe the same direction as to the first column to be filled up, and insert (in

figures) in the next column, the full Amount of such Dues, &c. in Lieu of Tythes (not being Tythes arising from Lands) on the like average.

If of the third description, you will also observe the same direction as to the first column, for being filled up, and insert (in figures) in the next column, the full Amount of such Compositions, &c. *on the Amount of the preceding Year.*

The Duty is in each case to be *charged* on the Lay Inproprietor, his Lessee or Tenant entitled to such Tythes or Payments, or his or their Agent or Factor, except for any Compositions, Rents, or other payments in lieu of Tythes; in which case the Commissioners are authorized, if they think fit, to charge it on the Occupiers of the Lands from which the Tythes arise, or on the persons liable to the payment of such Compositions, &c.

If in estimating the value of any of the Properties enumerated in this Chapter, it shall appear that the account required by the said Rules or any of them cannot be made out, by reason of the Possession or Interest of the Party to be charged having commenced within the time for which the Account is directed to be made out, it is lawful for the party, and all Persons concerned in executing the Act, to estimate the Profits of one Year in proportion, to the profits received within the time elapsed since the commencement of such possession or interest.

CHAP. V.

To Ecclesiastical Rectors, Vicars, or other Persons receiving any Tythes in Kind, or any Payments in Lieu of Tythes, in Right of the Church, or by Endowment; and Tiends in Scotland.

YOU being chargeable with the like Rate of Duty as Lay Impropriators for similar property, the same Division on the 2d side of paper "No. 5, 2d Part," is allotted for both returns, and you have only to follow the directions laid down in the last Chapter for their government, so far as respects the filling up such division, taking care, however, to make your entries in a line opposite the words "By any Ecclesiastical Person, &c." instead of opposite the words "By any Lay Impropriator, &c." as there directed, and distinguishing which of the three sorts of property it is.

The Duty in each case is to be charged on the Ecclesiastical Person, his Lessee or Tenant entitled to such Tythes or Payments, or his or their Agent or Factor, except for any Compositions, Rents, or other Payments, in lieu of Tythes; in which case the Commissioners are authorised, if they think fit, to charge it on the Occupier of the Lands from which the Tythes arise, or on the Persons liable to the payment of such Compositions, &c.

If in estimating the value of any of the properties enumerated in this Chapter as well as the last, it shall appear that the Account required by the said rules, or any of them, cannot be made out for the reason stated in the last Chapter, as to Property of the like nature, it is lawful to estimate the Profits of one Year as there specified.

The *Deductions* allowed on the enumerated Properties are,

1st. For the Amount of the Tenthos and First Fruits, Duties, and Fees on Presentations paid by any Ecclesiastical Person within the preceding Year.

2d. For Procurations and Synodals paid by Ecclesiastical Persons on an average of the seven preceding years.

3d. For Repairs of Collegiate Churches and Chapels and Chancels of Churches, or of any College or Hall, in any of the Universities of Great Britain, by any Ecclesiastical or Collegiate Body, Rector, Vicar, or other Person or Persons bound to repair the same, on an average of twenty-one years preceding, or as near thereto as can be produced.

If you are entitled to any such deduction, you have to insert the Amount or Amounts in respect to which you claim it in the spaces for sums in the division, on the same side the paper "No. 5, 2d Part," but in the division headed "Particular Deductions, &c." The "General Declaration" you will not fail to subscribe, as all are directed to do, in Chap. I.

And which Allowances are granted to the Ecclesiastical or Collegiate Body, Rector, or other Person liable to the charges therein mentioned, in one sum, and in the same manner as Allowances are granted in respect of Income,

either by deducting the same from the Assessment upon the party (if any), or by Certificate; and such allowances are classed as Allowances in respect of Income, particularly treated of in Chap. XIII.

No deduction from the estimate or assessment on any Lands, &c. is allowable in any case not authorised by the Act, nor unless claimed in writing, pursuant to notice, on making the return of the property.

Where any Rector, &c. entitled to any Rent or other Annual Payment in Lieu of Tythes, or any Composition for Tythes, pays out of the amount thereof all or any Parochial Rates, Taxes or Assessments charged thereon, the annual value is estimated for the purposes of the Property-Act, exclusive of such rates, &c. and of such compositions for tythes, to be computed on the amount thereof *bona fide* paid in and for the preceding year.

CHAP. VI.

To Persons deriving Profits from certain Quarries, Mines, Iron and other Works, Canals, Fishings, and Rights of Markets, Fairs, &c.

WHETHER you are Corporations, Companies, or Individuals, if your concern be either of the following, viz. Quarries of Stone, Slate, Limestone or Chalk, or Iron-Works, Salt Springs or Works, Alum Mines or Works, Waterworks, Streams of Water, Canals, Inland Navigations, Docks, Drains and Levels, Fishings, Rights of Markets and Fairs, Tolls, Ways, Bridges, Ferries, and other Concerns of the like nature, from or arising out of Lands, Tenements, Hereditaments, or Heritages; you are to write, in the column headed "Description of Property, with the name of the Person to be charged," opposite the printed name of the Work or Concern, (whatever it may be) which you will find in Division No. 2, on the second side of paper "No. 5, 2d Part," the exact description thereof, and the Name of the Person or Persons to be charged according to the rule hereunder stated.

And in the next column, headed "Annual Value of Profits," write the Amount (in figures) of such Profits in the preceding year, in order to your being charged £10 per cent. duty

thereon, which is the rate you are liable to in respect thereof.

And if your concern be either of the following, viz. Mines of Coal, Tin, Lead, Mundic, Iron and other Mines, you have to insert in the same column, headed "Description of Property, &c." and opposite the three lowest printed lines, the exact description of the Mine in question, and the Name of the Person or Persons to be charged, according to the same rule hereunder stated; and in the said adjoining column, the Amount of Profits on an average for the five preceding years, in order to your being also charged as above.

The "General Declaration" at the foot must not fail to be both super and sub-scribed, as is directed in Chap. I. in order to your return, (as far as concerns this paper,) being complete.

The Duty is charged on the Person or Persons, Corporation, Company or Society of Persons, whether corporate or not orporate carrying on the concern, or on their respective Agents, Treasurers or other Officers having the direction or management thereof, or being in the receipt of the profits thereof, on the amount of the produce or value thereof, and before paying, rendering or distributing the produce or the value, either between the different persons or Members of the Corporation, &c. engaged in the concern, or to the Owner or Owners of the Soil or Property, or to any Creditor or other person whatever having a claim on or out of the said profits. And all such Persons, Corporations, &c. shall allow out of such produce or value, a proportionate Deduction out of the Duty so charged; and the said Charge must be made on the said Profits, exclusiyely

of any Lands used or occupied in or about the concern.

The computation of Duty arising in respect of any such Mine carried on by a Company of Adventurers, must be made and stated jointly in one sum, with a proviso that if any Adventurer shall declare his proportion or share in such concern, in order to a separate assessment, it is lawful to charge such Adventurer separately, and for him, when so separately assessed, to deduct or set against his profits acquired in one or more of such concerns, his loss sustained in any other of the said concerns over and above the profits thereof; provided that such loss shall not exceed the Proportion of such Adventurer which shall have been duly proved by the Company in their Computation of Duty, and shall have been allowed by the Commissioners. And in every such case one Assessment only is lawful to be made on the Balance of such Profit and Loss of the Adventurer so separating his account, in the parish or place where such Adventurer shall be chargeable to the greatest amount; and the Amount of each Person's Share so proved and allowed must be deducted from the General Assessment of the Company or Companies to which such Adventurer belongs. And the Commissioners are to cause the Assessments on the said Companies to be rectified, as the case requires. And the Certificate of the Commissioners making such separate assessment is an authority to the Commissioners acting in another district, to cause the Assessments on the respective Companies to which such assessments belong to be rectified. And in case such loss arises in a different District from that in which such separate assessment is to be made, a certificate of the amount

of such loss and the proportion of such adventurer therein, is proof of the deduction to be made by the Commissioners making such Assessment.

Instead of being charged in the place where situate, according to the general rule, the Profits arising from Canals, Inland Navigation, Streams of Water, Drains or Levels,—or from any Roads or Ways of a public nature, and belonging to or vested in any Company of Proprietors or Trustees, whether corporate or not corporate, may be stated in one Account, and charged in the city, town or place, at or nearest to the place where the general accounts of such concern have been usually made up ; and it is lawful for the Proprietors or Trustees, having paid the duties so chargeable, either to deduct a just proportion thereof from the interest payable to the Creditors of the said proprietors, or any of them, or to pay such interest in full, without making any such deductions ; and it is lawful for the said creditors to receive such interest in full ; and they, or any of them, are not liable, thereupon, to the general penalty for not deducting the duty.

If any Mine hereafter described has for some unavoidable cause been decreased, in the annual value thereof, so that the average of five years would not give a fair and just estimate of the annual value thereof, it is lawful on due proof to the Commissioners in the district where situate, to compute such annual value on the actual amount of such profits and gains in the preceding year, subject to abatement of a proportionate part of the duty on account of diminution of profits within the current year, on due proof thereof to the Commissioners within or at the end of such current year ; who are to

amend the Assessment accordingly, and, if the sum assessed has been previously paid, to certify to the Bank of England, or Receiver-General, the amount of the sum overpaid, which is thereupon to be refunded. And if any such Mine, from unavoidable cause, shall have wholly failed, it is lawful for the Commissioners, on due proof, wholly to discharge any assessment made thereon—provided that whenever the Mine shall be situate or the produce manufactured in a different place than where the produce thereof shall be sold, the profits arising therefrom shall be assessed and charged in the parish or district where the mine is situate or the produce manufactured, and not elsewhere.

And if, in estimating the value of any of the above properties, it appears that the Account required by any of the said rules cannot be made out by reason of the possession or interest of the party to be charged thereon having commenced within the time for which the account is directed to be made out, it is lawful for the party and all persons concerned in executing the Act, to estimate the profits of one year in proportion to the profits received within the time elapsed since the commencement of such possession or interest.

CHAP. VII.

*To Lords and Ladies of Manors or Royalties,
and Tenants of the same.*

THE profits from these properties (on which also £10. per cent. is charged) include all duties and other services, or other casual profits (not being rents or other annual payments, reserved or charged); and the Tax is chargeable on the Lord or Lady, or person renting the same.

You are therefore, (of whichever of the two descriptions), to insert on the second side of paper "No. 5, 2d Part," in the second column of the division under the title, "No. 3. By every Lord, &c." the nature of the property, thus : *Manor of* [adding the name of such property] and the name of the Person chargeable as above ; and in the next column, the Amount of such Profits, on an average of the seven preceding years ; and at the foot of such paper, "No. 5, 2d Part," subscribe the General Declaration, as instructed in Chap. I.

If such profits arise from any Manor or Royalty extending into different Parishes, the same may be assessed in one account, in the Parish where the Court for such manor or royalty has been usually held. And if, on estimating the value, it appear that the account

required upon such average, cannot be made out by reason of the possession or interest of the party to be charged thereon having commenced within the time for which the account is directed to be made out, it is lawful for such party and all persons concerned in executing the Act, to estimate the profits of one year, in proportion to the profits received within the time elapsed since the commencement of such possession or interest.

CHAP. VIII.

To Persons receiving any Fines paid in consideration of a Demise of Lands or Tenements, except customary.

YOU are on the second side of paper "No. 5, 2d Part," and in the second column of the division entitled "No. 4.—By the Receiver of any Fine, &c." to insert the word *fine* and your own Name underneath, as being the person chargeable with it; and in the adjoining column the amount (in figures) of such Profits so received within the year preceding, by or on your account, or for such lesser period since your interest therein commenced, and an Estimate of the Average Value for one year; but if you shall prove, to the satisfaction of the Commissioners, that such fines, or any part thereof, have been applied as productive Capital, on which a profit has arisen or will arise, otherwise chargeable for the year of assessment, it is lawful for the Commissioners to discharge the amount so applied from the profits liable to assessment under this rule.

And particularly observe to sign the General Declaration, at the foot, as instructed in Chap. I. to make your return complete.

This duty extends to every Person or Persons, Bodies Politic or Corporate, Fraternities, Fellowships, Companies or Societies, and to every Trade, Profession or Vocation, Art, Mystery, Adventure or Concern; carried on by you, in Great Britain or elsewhere, except such adventures or concerns on or about Lands, Tenements, &c. as are shewn in Chap. II. to be differently charged.

If it be a Profession instead of a trade from which your profits are derived, you are to fill up the column No. 2, on the same side of the paper, in the same manner precisely as instructed for No. 1, computing the Profits to be those received within the preceding year, ending 5th April next preceding the year of assessment; or if the profession commenced within the year, then upon an Average for a year according to the receipts within the time of following the profession—such profits being charged with the duty of £10. per cent. the same as the profits of trade; and which duty extends to every employment by retainer in any character whatever, and whether annual or for a longer or shorter period, and to all profits and earnings of whatever value, subject only to such exemptions and allowances as are treated of in Chap. XIII.; but certain Deductions are to be allowed from Profits of Trade, &c. or any profession, &c. in order to find the Balance; which are as follow:

Any sum or sums for Repairs of Premises occupied for the purposes of the Trade or Profession, &c.—for the supply, or repairs or alterations of any Implements or Utensils or articles employed in such trade, &c. not exceeding the sum usually expended for such purposes, according to an average of the three preceding years.

Any Debt or Debts, or parts thereof proved to the Commissioners to be irrecoverable.

Any Average-Loss not exceeding the actual amount of loss after adjustment.

Interest of Debts due to Foreigners not resident in Great Britain, or in any other of His Majesty's dominions. And

Two third-parts of the Rent or annual value of any Dwelling-House or Domestic Offices, used wholly or in part for the purpose of Trade, &c. or a lesser proportion, to be adjusted by the Commissioners. But

No deductions can be allowed on account of loss not connected with or arising out of such trade, &c.—nor on account of any capital withdrawn therefrom—nor for any sums employed or intended to be employed as capital therein—nor for any capital employed in the improvement of premises occupied for the purposes thereof—nor on account or under pretence of any interest which might have been made of those sums, if laid out at interest—nor for any debts not proved to be irrecoverable—nor for any sum recoverable under an insurance or contract of indemnity—nor for any annual interest, nor any annuity or other annual payment made out of such profits or gains, except the interest of debts due to foreigners as aforesaid—nor for any disbursements or expences which shall not be money wholly and exclusively laid out or expended for the purposes of such trade, &c.—nor for any disbursements or expences of maintenance of the parties making their returns, their families or establishments; nor for any sum expended in any domestic or private purpose, distinct from the purposes of trade, &c.—nor for any loss sustained in trade, &c. except as aforesaid.

The Computation of the Duty charged in respect of any Trade, &c. whether carried on by one person singly or by more jointly, or by any corporation, to be made exclusive of the profits or gains arising from Lands and Tenements occupied for the purpose of such trade, &c.; and if carried on by two or more persons jointly, to be made and stated jointly, and in one sum, and distinct from any other duty also chargeable on any of you ; and the return of the Partner first named in the Deed or Agreement of Copartnership, or if no such deed, &c. then of the Partner named singly or first named in the firm ; or where such first-named Partner shall not be an acting partner, then of the first-named Acting Partner, and who shall be resident in Great Britain, is sufficient authority to charge such partners jointly.

And such Joint Assessments must be made in the Partnership Name or Firm, and according to the Amount of Profits of the Partnership.

And in the third column, under "On whose behalf, &c." you will, if such precedent Acting Partner in any firm, enter your name as such, opposite the sum for profits.

The return to be made under No. 2, on the same side of the paper by a *professional* man is similar to that under No. 1 by a *tradesman*, observing the rules affecting it.

And if you do not receive interest of money, or any annuity or other annual payment derived from property out of Great Britain, or any sum or interest (including securities) not otherwise chargeable, or dividends in the public funds of less than 40s. per year, or profits from securities or possessions in Ireland, or in the British Plantations or other of His Majesty's Dominions, or from foreign securities or possessions, or from property not coming under any of the

foregoing heads, (except lands, &c. or other property of which no return is required to be made). Then you pass by No. 3, 4, 5, 6, 7, 8, and 9, and have nothing more to do with that division of that paper.

But if you receive Interest of Money, Annuities, or other annual payments, derived from property out of Great Britain, or from payments or interest (including securities) not otherwise chargeable, you are to insert in the column for profits opposite No. 3 on the second side of that paper, the Amount (in figures) of such interest, &c. which comprehends Profits of uncertain annual Value, and Profits on all Securities bearing Interest payable out of the public revenue (except dividends of the public stocks, the duty whereon, if the dividend be above 20s. half-yearly, is retained at the Bank of England, &c.) and all Discounts and all Interest of Money, not being annual interest, payable or paid by any persons whatsoever, according to the full Amount thereof arising *within the preceding year*, without deduction, and upon which you are chargeable with £10. per cent. duty.

If you receive any Dividend from the Public Funds, the half-yearly amount of which is less than 20s. you must enter the Annual Amount thereof in the money-column, opposite No. 4, in order to be charged at the rate of 2s. in the pound thereon.

If you receive Interest from Securities in Ireland or in the British Plantations in America, or in any other of His Majesty's dominions out of Great Britain, except annuities, dividends and shares payable out of the public revenue of Ireland, placed under the superintendance of special commissioners, you are to insert the Amount thereof in the money-column opposite

No. 5, being the whole and just sum or sums (so far as the same can be ascertained) which have been or will be received in Great Britain in the *current year*, without deduction, in order to your being charged with the duty of 2s. in the pound, thereon.

If you receive any profits from Possessions in Ireland, or in the British Plantations in America, or in any other of His Majesty's Dominions out of Great Britain, the same being also chargeable with a duty of £10. per cent. you are to insert the full nett Amount thereof in the money-column opposite No. 6, being the full amount, without deduction or abatement, of the Average of the actual receipts in money in Great Britain of the three preceding years (ending on that day of the year, immediately preceding the year of assessment, on which the accounts relating thereto have been usually made up, or on the 5th of April preceding the year of assessment) either for remittances from thence payable in Great Britain or from property imported from thence into Great Britain, or from money or value received in Great Britain and arising from property which shall not have been imported into Great Britain, or from money or value so received on credit or on account in respect of such remittances, property, money, or value, brought or to be brought into Great Britain.

If you receive any Interest or Dividends from Foreign Securities, you are to insert in the money-column opposite No. 7, the whole and just sum or sums (so far as the same can be computed) which have been or will be so received in Great Britain, in the *current year*, without deduction or abatement; the duty upon which is also £10. per cent.

If you derive any Profit from Foreign Possessions, the same is also chargeable with £10. per cent. duty, and you are to insert the amount thereof in the money-column opposite No. 8, upon the *same average* as above directed with respect to the Profits from Possessions in Ireland, &c. to be set opposite No. 6.

The duties on Interest, Produce, or Profits arising from Foreign Possessions or Foreign Securities, or from Possessions or Securities in any of His Majesty's Dominions out of Great Britain, shall be assessed by the Commissioners of such of the following places, viz. London, Bristol, Liverpool, and Glasgow, at or nearest to which such property shall have been first imported into Great Britain, or at or nearest to which the person receiving such remittances, money or value from thence, and arising from property not imported shall reside. And where any such produce or profits shall have been partly imported into London, and partly into any of the said out-ports, or shall have been received by any person or persons partly in London and partly in any of the same out-ports, within the period of making up the account on which the duty is chargeable according to the above rules, the whole of the duty shall be assessed and charged by the Commissioners for London and not elsewhere, and as if the whole produce or profits had been received in London; and if the same produce or profits shall be wholly imported into or received at the said out-ports, and different parts thereof at *two* or more of such out-ports, the duty thereon shall be assessed and charged at that *one* of the said out-ports, where the major part in value of such produce or profits shall have been received. And the statements of

such produce or profits shall be delivered to the Commissioners for each place at which any part thereof shall have been so imported and received, and transmitted by them to the Board of Taxes, who shall cause all such statements to be sent to the Commissioners acting for the place where the duty is so chargeable, who shall accordingly assess the same in one sum.

If you receive any Annual Profits or Gains not falling under any of the foregoing heads, and not otherwise charged by the Act, you are to insert the full Amount thereof in the money-column opposite No. 9, either as *received annually* or according to the fairest average, to the best of your knowledge and belief. And in the printed form of Declaration immediately following, you are to state the Nature of such profits or gains, and the Mode of Computation, and whether upon any and what Average, in order to the Commissioners admitting such computation or adopting any fairer one; and to sign your name thereunder.

If you are the Precedent Acting Partner of a firm, you are, under the penalty of £20. and double duty for default, to insert your Name after the pronoun "I," at the beginning of No. 10 (on the same paper) and the words *Precedent Acting Partner* in the following line, and sign your name under that Declaration. In the next column, headed "Description or Style of the Firm," must be set down the exact Firm used in your trade, &c.—in the next column, the Place in which it is carried on—in the next, the Names, one under the other, of all the Partners, in the order in which you usually name them—and in the last column, their respective Residences, opposite their names.

If any of you, as Partners, are entitled to be

charged at different rates or to any exemption or allowance, you may declare the Proportions of your Shares in the concern by respectively filling up the division No. 11 of the same paper with your Name—the Firm of the house, and your Share therein—the Day, Month and Year when you so do it, and your Name again underneath; upon which it is lawful for the Commissioners to charge you separately, at the rate with which such proportions shall be chargeable, by virtue of the Act; but if no such claim be made, then such assessment shall be made jointly, according to the Amount of Profits or Gains of the Partnership; and no separate assessment is allowed in any case of partnership, except for the Partners separately claiming an exemption or allowance under the Act, or of accounting for separate concerns.

If you are desirous of being assessed under a Number or Letter, and of paying the duty assessed upon you for profits under Schedule D. into the Bank of England, or to the Receiver-General or his Deputy, you will fill up the Form of Declaration, No. 12—stating to whom you wish to pay the duty, and dating and signing such declaration; and in case the Commissioners shall be satisfied with such declaration, they shall deliver to you, or to such person as may be attending on your behalf, a Certificate, under the hands of two or more of them, specifying the Amount of the Sums to be paid within one year upon such assessment, and bearing the same number or letter as the entry in their book, without naming or otherwise describing you; and which certificate shall, on production thereof, be a sufficient authority to the Bank of England and to the Receivers-General and their Deputies in England and Scotland, to receive

from you, the amount thereof by three or two instalments, or in one sum in full, or in advance by two instalments at least, subject to Discount; and on receipt thereof or any part thereof, the Governor and Company, and the Receivers-General and Deputies, shall give one or more certificates, acknowledging the receipt of the money accordingly; and upon delivery of any such last-mentioned certificates to the Commissioners, or at their Office, they or their Clerk will indorse in writing the amount of the sum or sums to be discharged, and give you a Receipt or Receipts for the same, which are effectual discharges therefrom. And if you neglect to pay the same to the Bank of England or to the proper Receiver-General or his Deputy, in course, or after payment neglect to deliver the Certificate, the Commissioners are required to deliver a Duplicate of the sum or sums for which you make default, together with their Warrant, to such Collector as they shall appoint, to levy the money in arrear or unaccounted for.

Any person charged with duty may at any time pay to the Bank of England or any person authorized by the Bank, any sum on account of such duty, and require a Certificate of such payment; and all sums so paid, not exceeding the amount of the duty, will be deemed on account thereof, and in advance of the same; and the excess of the sums paid above the amount of the duty will be taken to be voluntary contributions toward the purposes of the Act (which any person may formally make); and such certificates are, upon delivery thereof to the Commissioners or their Clerk, to be an acquittance for so much duty as the person giving such certificate indorses thereon.

If you are a Partner in a concern the Precedent Partner in which has already returned the same, you may make the Declaration in the division No. 13, by letting your name follow the "I," adding the date at the foot and your own signature—and in the next column stating the Firm of your house—and in the next or last, where the full return has been made by such Precedent Acting Partner; which is all that is necessary for you to do with respect to such joint concern, unless the Commissioners should require further returns; in which case it is lawful for them to require from every such Partner the like returns, and the like information and evidence, as they are entitled to require from the Partner making the return of duty.

If you have already made the return of your whole profits under Schedule D. in any other place where they are chargeable, you need do no more, unless specially required by the Commissioners, than fill up the form No. 14, by putting your name at the beginning and the end and inserting the date—and in the next column the Description of the Trade, &c. in question—in the next column the Place where the full return was made, and in the last, in what County.

If you hold any Office or Employment of Profit not charged by Special Commissioners, you are to attend to the directions in the following Chapter for filling up No. 15, but otherwise you pass over it to the General Declaration at the foot, which you complete by putting your name immediately after the pronoun "I" at the beginning, and again at the end thereof, opposite the word "Signed."

Any Married Woman acting as a sole trader, by the custom of any city or place or otherwise,

or having or being entitled to any property or profits to her sole separate use, is chargeable to the like duties and in like manner as if she were sole and unmarried, except that the profits of any married woman living with her husband are deemed the profits of the husband, and charged in the name of the husband and not in the name of herself, trustee or trustees; and any Married Woman living in Great Britain separately from her husband, whether the husband be temporarily absent from her, or from Great Britain or otherwise, who receives any allowance or remittance from property out of Great Britain, is charged as a *femme sole*, if entitled thereto in her own right, or as the Agent of her Husband, if she receive the same from or through him, or from his property or on his credit.

If amongst any persons engaged in Trade, &c. or in a Profession in Partnership, any change shall take place in any such partnership, either by death or dissolution of partnership, as to all or any of the partners, or by admitting any other partner therein, either before the time of making the assessment or within the period for which the same ought to be made, or if any person shall have succeeded to any such trade, &c. or any profession, within such respective periods as aforesaid, the Commissioners and the Party or Parties interested, and every Officer under the Act, are to compute and ascertain the duty payable in respect of such partnership, or any of such partners, or any person succeeding to such profession, trade, &c. according to the profits and gains of such business during the said respective periods, notwithstanding such change or succession therein—unless such partners or partner or person so succeeding

prove, to the satisfaction of the Commissioners, that the profits have fallen short, or will fall short, from some and what specific cause, since such change or succession, or by reason thereof.

Every Statement of Profits to be charged under Schedule D. shall include all and every source so chargeable on the person delivering the same, on his own account; who shall be chargeable with the whole of the duties thereon in one and the same division and by the same Commissioners, except when engaged in different partnerships or in different concerns relating to trade or manufacture in divers places; in each of which cases a separate assessment must be made in respect of each concern, at the place where, if singly carried on, it ought to be charged.

If the Commissioners, on examination, find that any Lands occupied by a Dealer in Cattle, or by a Dealer in or Seller of Milk (which lands shall have been estimated or charged on the rent or annual value) are not sufficient for the keep of the cattle brought thereon, so that such rent or annual value cannot afford a just estimate of the profits of such Dealer, the Commissioners may require a return of such profits, and charge such further sum thereon as, together with the duty in respect to the occupation of lands, shall make the full sum whereby such Trader ought to be charged in respect to the profits arising therefrom, within the preceding year ending on that day of the year immediately preceding the year of assessment, to which the accounts thereof have usually been made up, or on the 5th of April immediately preceding the year of assessment.

If you carry on, either solely or in partnership, Two or more distinct Trades, &c. you

may deduct or set against the profits acquired in one or more of such concerns, the excess of loss sustained in any other of them, above the profits thereof, in such manner as is lawful for a loss to be deducted from the profits of the same concern, and you may make separate statements thereof.

If any Annuity, yearly Interest of Money, or other annual payment, issues out of gains and profits charged by this Act, no assessment must be made upon the person entitled thereto, but the whole profits or gains are charged with duty upon you, as liable to such annual payment, without distinguishing the same; and you, as being so liable to make the same payment, whether out of the profits or gains charged with duty, or out of any annual payment subject to deduction or from which a deduction hath been made, are authorised to deduct out of such annual payment at the rate of 2s. for every 20s. of the amount thereof (except a Certificate of Exemption or Allowance be produced, authorizing a deduction at a lower rate, or exempting the payment on such deduction); and the person or persons to whom such payments are made must allow such deduction at the full rate of duty, upon receipt of the residue of the money, and you are fully discharged in consequence; and the person to whom any such annuity (subject to allowance) is to be paid, must allow such deduction as remains to be made after granting the allowance authorised (as pointed out in Chap. XIII. of this Book) upon receipt of the residue of the annuity.

Any person refusing to allow any deduction authorized by the Act, out of any payment of Annual Interest of money lent or other debt bearing annual interest, whether secured by

mortgage or otherwise, forfeits for every offence triple the value of the principal money or debt ; and any person refusing to allow any such deduction out of any rent or other annual payment relating to Land or Tythes, or out of any Annuity or Annual Payment asssested by Commissioners of Departments, or out of any annuity, yearly interest of money or other annual payment from Gains and Profits, shall forfeit £50. And all Contracts, Covenants and Agreements made for payment of any interest, rent or other annual payment aforesaid in full, without allowing such deduction as aforesaid, are utterly void.

Whenevir it is proved to the satisfaction of the Commissioners that any Interest of Money, Annuity, or other annual payment, is annually paid out of the Profits and Gains *bona fide* accounted for and charged according to the above rule in this Chapter, without any deduction on account thereof, it is lawful for the Commissioners to grant a Certificate thereof, under the hands of two or more of them, according to the form in the Act, entitling you as the person so assessed, upon payment of such interest, &c. to abate and deduct so much thereof as a like rate on such interest, &c. would amount unto ; and all persons to whom such interest, &c. is payable shall allow such deductions and payments upon receipt of the residue of such interest, &c. and you are to be discharged therefrom.

If any Trade be carried on in Great Britain by the Manufacture of Goods, &c. the assessment thereon must be at the place of manufacture, although the sales thereof be elsewhere.

If you have Two Residences, or carry on any trade, &c. or exercise any Profession, &c.

in different places, or in any place different from the place of your ordinary residence, you shall, if required by the respective Commissioners, deliver at each such Parish or Place the like lists, declarations and statements as you are required to deliver in the parish where you ought to be charged; but you are not liable to any double charge by reason thereof; and all lists, &c. containing the amount of profits chargeable by the rules in this Chapter may be delivered sealed up, if superscribed with your name and place of abode, or place of exercising the profession or carrying on trade, to the Assessors or Commissioners, within the limited time, viz. twenty-one days from the date of the notice to you.

If by any Error an assessment or any part thereof shall be made upon any profits or gains arising from any property which shall have been otherwise charged, the Commissioners on due evidence thereof to their satisfaction, may vacate such assessment on any part so doubly assessed; which proof must be either by a Certificate of the Assessment made on such property, under the hands of two or more of the Commissioners by whom such last-mentioned assessment shall have been made, and that the same is included in such last-mentioned assessment, or by other lawful evidence given of such facts, on the oath or oaths of any credible witness or witnesses. And whenever such Commissioners shall certify to the Commissioners for the Affairs of Taxes, Somerset-House, that such double assessment hath been made and is not vacated, and that payment hath been made of *both* assessments, it is lawful for the Commissioners for the Affairs of Taxes to direct the Receiver-General, who shall have received

the sums so doubly assessed, to repay the same to the party ; which order shall be an authority to such Receiver-General to repay the same, and such re-payment shall be allowed in his accounts.

If within or at the end of the current year for making the assessment, any person, charged to duty under Schedule D. (whether the profits so arising were computed on the amount in the preceding or current year, or on an average of years) shall find and prove to the satisfaction of the Commissioners by whom the assessment was made, that the profits during such year fell short of the sum so computed in respect of the same source of profit on which the computation was made, the Commissioners, on such proof, may cause the assessment for such current year to be amended, as the case requires ; and in case the sum assessed shall have been paid, to certify under their hands and seals to the Bank of England or to the Receiver-General to whom the same shall have been paid, the amount of the sum over-paid upon such first assessment ; and on production of such Certificate it is lawful for the Bank and for the Receiver-General to refund such sum so over-paid, out of any public monies to be directed by the Act to be paid to them, who shall, if necessary, replace the same out of the first monies for duties coming to their hands.

And in case any such person so charged with property-duty ceases to exercise the profession or carry on trade, &c. or dies or becomes bankrupt or insolvent, before the end of the year of or for making the assessment, or from any other specific cause is deprived of or loses the profits on which the charge was made, it is lawful for such person, or the heirs, executors, &c. of

such person to make application to the Commissioners of the district *within three months* after the end of such year ; and on due proof to their satisfaction, they may cause the assessment to be amended as the case requires, and to give such relief to the party or to his heirs, executors &c. as is just, and in a case requiring the same to cause repayment ; provided that when any person has succeeded to the business of the party charged, no abatement is allowed unless it be proved to the satisfaction of the Commissioners that the profits thereof have fallen short from some specific cause, to be alleged and proved, since such succession took place ; but the successor is liable to payment of the full duties thereon, without any new assessment.

CHAP. XI.

To Persons in Office, under Schedule E.

A DUTY of £10. per cent. is payable upon all Salaries, Fees, Perquisites, Profits and Emoluments, Annuities, Pensions and Stipends, whatsoever, payable either by the Crown or the Subject, accruing by reason of any office or employment of profit, of the following descriptions.

Any office belonging to either House of Parliament, or to any Court of Justice, whether of law or equity, in England or Scotland, Wales, the Duchy of Lancaster, the Duchy of Cornwall, or any Criminal or Justiciary or Ecclesiastical Court, or Court of Admiralty, or Commissary-Court, or Court-Martial—any public office held under the Civil Government of His Majesty, or in any County Palatine or the Duchy of Cornwall—any Commissioned Officer serving on the Staff or belonging to His Majesty's Army in any regiment of Artillery, Cavalry, Infantry, Royal Marines, Royal Garrison-Battalion, or Corps of Engineers or Royal Artificers—any Officer in the Navy or in the Militia or Volunteer service—any Office or Employment of profit held under any Ecclesiastical Body, whether aggregate or sole, or under any Public Corporation, Company or Society, whether corporate or not corporate—any office or

employment of profit under any Public Institution, or on any Public Foundation, of whatever nature or for whatever purpose the same may be established—any office or employment of profit in any County, Riding or Division, Shire or Stewartry, or in any City, Borough, Town Corporate or Place, or under any Trusts or Guardianship of any Fund, Tolls or Duties to be exercised in any such county, &c. and every other public office or employment. And

If you hold, use or exercise any office or employment of profit of either of the above descriptions, *which is not charged with duty by Commissioners specially appointed for the purpose of assessing the same in the particular Department of Office in which the profits arise*, you are to fill up the division in No. 15 of the second side of paper “No. 5, 4th Part,” by inserting in the second column of such division (opposite that part of the printed description of office answering to your case) the *Official Names* of the person or persons by whom your appointment was granted—in the next succeeding column, the *description or nature* of such your office or employment; and in the third column, the Amount of Annual Profits received by you in the preceding year, or of the fair and just Average, for one year, of the amount of the profits thereof in the three preceding years, such years in each case respectively ending on the 5th of April in each year, or on such other day of each year as to which the accounts of such profits have been usually made up.

And you are also to fill up the General Declaration immediately under such columns, by inserting your Name in the blank space following the pronoun “I,” and also opposite the word “Signed,” under such general declaration.

In any case where an office or employment of profit, or any annuity, pension or stipend is charged with any sum or sums of money payable to any other person or persons, a fair proportion of such duty shall be deducted thereout; and all such persons, their agents and receivers, shall allow such deductions and payments, upon receipt of the residue of such sums.

In estimating the duty payable for any Office, &c. all official deductions and payments made upon the receipt of the salaries, fees, wages, perquisites and profits thereof, or in passing the accounts belonging to such office, or upon the receipt of such pension, annuity or stipend, shall be allowed to be deducted, provided a due account thereof be rendered to the Commissioners, and proved to their satisfaction.

No person shall, in respect of the profits arising from offices, pensions or stipends, chargeable before the respective Commissioners appointed for those purposes in their respective departments of office, be liable to the general penalty for not returning a statement of such profits, in pursuance of any general notice, nor in any case except where the Assessor for these profits respectively shall require returns thereof from the parties themselves, to be made under the general penalty for default.

In every case where any person holding such offices or employments, or being entitled to any pension or stipend as aforesaid, shall claim an allowance, or to be discharged wholly from the assessment, as treated of in Chap. XIII. the Commissioners shall nevertheless set down in such assessment the name of such person, and the full and just annual value of such offices, &c. And the claims to such abatements shall be preferred and examined, and the

merits heard and determined under the regulations of the Act with respect to other assessments.

Where any office or employment of profit chargeable is executed by Deputy, such Deputy shall, in all cases where he is in the receipt of the profits thereof, be answerable for and pay such assessment as may be charged thereon, and deduct the same out of the profits of such office or employment; and where the salaries, fees, &c. of any Officer in any such office shall be receivable by any one or more of the said officers for the use of such Officer or as a Fund to be divided amongst such Officers in certain proportions, the Officer receiving such salary, &c. shall be answerable for and pay the duties charged thereon, and deduct the same out of the funds provided for such respective offices and employments, before any division or apportionment thereof; and in case of refusal or non-payment thereof, he will be liable to such distress as by the Act is prescribed against any person having the office or employment, and to all other remedies and penalties.

If by any Error an assessment or any part thereof shall be made upon the profits of any office or employment of profit which shall have been otherwise charged, the Commissioners on due proof thereof to their satisfaction may vacate such assessment on any part so doubly assessed, in the same manner as for any double assessment on the profits of trade, &c. as treated of in the last preceding Chapter.

An additional duty of 6d. in the pound is laid on all Pensions and Annuities charged upon any of His Majesty's Revenues, or any rates or duties granted to His Majesty or upon the Contingent Fund, Fees or Incidents of any

office, or upon any public monies, and also upon all salaries, fees and wages payable for or in respect of offices of profit granted by or derived from the Crown, which have been subject to the payment of a similar duty from the time of George II.; and 1s. in the pound upon the yearly value or amount of all salaries, fees and perquisites incident to or received in respect of all offices and employments of profit; and also 1s. in the pound upon all Pensions and other Gratuities payable out of His Majesty's Revenue or out of the Contingent Fund, Fees or Incidents of any office, or out of any public monies exceeding the value of £100. per annum, which were before the Property-Act charged with a similar duty of 1s. in the pound; and the payment of one of such duties of six-pence or a shilling is no exemption or discharge from paying the other thereof, if the person was liable to pay more than one of such duties before the passing of such Act—such duties to be assessed, &c. under the provisions of the Property-Act, in the same manner as the duties imposed by that Act on salaries, fees, wages or other perquisites or profits accruing by reason of offices or employments of profit, and on annuities, pensions and stipends, and subject to all the rules thereof—provided that the said additional duties are not chargeable upon any person in respect of any office or employment of profit, or upon any annuity, pension, &c. in any case in which the same have been specially exempted from deduction, by any Act of Parliament or Order in Council or Royal Warrant or Order of the Treasury, to be certified by some principal Officer in the department to which such office or employment belongs.

These taxes of sixpence and one shilling in the pound are commonly called Payments in Aid of the Civil List, and are comprehended in the term *official deduction* above mentioned to be made from the amount of salary, &c. and the Property-Tax is payable upon the residue.

CHAP. XII.

To Trustees, Agents, and Receivers, &c.

ALL Bodies Politic, Corporate or Collegiate, Companies, Fraternities, Fellowships or Societies of Persons, whether corporate or not corporate, are chargeable with such and the like duties as are chargeable upon individuals; and the Chamberlain or other officer acting as Treasurer, Auditor or Receiver for the time being, of every such Corporation, &c. is answerable for doing all necessary acts—for assessing such bodies, &c. to the duties, and paying the same.

The Trustee, Guardian, Tutor or Curator, of any person being an Infant or Married Woman, Lunatic, Idiot or Insane, and having the management of the property or concern of such infant, &c. whether such infant, &c. reside in Great Britain or not, is chargeable to the duties in the same manner as if such infants, &c. were of full age, &c. And any person not resident in Great Britain, whether a subject of His Majesty or not, is chargeable in the name of any such Trustee, &c. or of any Agent or Receiver having the receipt of any profits or gains arising as mentioned in Chap. X. and belonging to such person, in like manner as would be charged on such person if he or she were resident in Great Britain, and in the actual receipt thereof; and all receivers appointed by

the Court of Chancery or otherwise are chargeable to the duty on profits, &c. received by them.—And every such Trustee, Receiver, &c. is answerable for the doing of all acts, &c. requisite, in order to the assessing such person to the duties and paying the same.

If you therefore act in either of those characters, you are to fill up such of the three last divisions on the second side of paper “No. 5, 1st Part,” as answer to your case, by inserting the Names of the Adults or Married Women and their Husbands, and their Residence, in the two first columns of such first division, if coming under the description there given, and signing your Name to the Declaration thereunder.—If those for whom you act are of the second description, you will insert their Names and Residence in the first and second upper columns of such second division, and your own Name, and the Name of any other person joined with you in the trust, and your respective Residences, in the two columns under the subjoined declaration.

And if of the third description, you will insert the Name of the Corporation, &c. in the first or second column of such third and lowest division, and in the third column where chargeable, that is to say, where their powers are exercised or principal office is situate—and to the whole of which you will subscribe your Name opposite the word “Signed.”

If you are Agent or Factor for any Lay Propriator or Ecclesiastical Person, their respective Lessee or Tenant, you are to attend to the directions of Chap. IV. or V. as precisely applicable to your case—the duty being chargeable upon yourself.

If you and any other persons are liable to be

charged for the same person or persons, one return only shall be required, and such return shall be made by you jointly or by one or more of you, on behalf of yourselves and the rest of the persons so liable; and it shall be lawful for you or any of you to give Notice in Writing to the Commissioners acting in the District where you or any of you shall be called upon for such statement, in what parish or place, parishes or places you are respectively chargeable by the Act, on your own accounts, and in which of such parishes, &c. you are desirous of being so charged on behalf of the other person or persons for whom you so act, in any of the characters before mentioned; and you will be assessed accordingly by one assessment in such parish or place, provided any one of you shall be liable to be charged on your own account in such parish or place; and if more than one assessment shall be made on you on the same account, you shall be relieved from such double assessment by like application to the Commissioners, as is allowed to tradesmen, &c.

Should any profits received by you come under any of the descriptions enumerated in the first nine heads of the second side of paper "No 5, 3d Part," you have to state in the third column, opposite the correspondent description of trade, &c. that you act as such Trustee, &c. and for whom by name you do so act—not forgetting to add your own Name at the beginning and end of the General Declaration at the foot of such second side thereof.

And you may afterwards retain sufficient of the monies which shall from time to time come to your hands, to pay such assessment, and you are indemnified for so doing.

If any person who ought to deliver any

list, declaration or statement, refuse or neglect so to do within the time limited by the notice, or shall under any pretence wilfully delay the delivery thereof, and should information be given and proceedings thereupon be had before the Commissioners, every such person will forfeit and pay a sum not exceeding £20. and double the duty at which such person ought to have been charged, but subject to the stay of proceedings by a subsequent delivery of such list, &c. In case any Trustee, &c. shall deliver an imperfect list, &c. declaring himself or herself unable to give a more perfect list, &c., with the reasons for such inability, the Commissioners are to be satisfied therewith, and the Trustee, &c. is not liable to such penalty, if the Commissioners grant further time for the delivery thereof; and such Trustee shall within the time so granted deliver a list, &c. as perfect as the nature of the case will admit. And every person prosecuted for such offence, by action or information, in any of His Majesty's Courts, and who shall not have been assessed in double duty, will for every such offence forfeit and pay £50.

If you are Agent, Manager or Factor, resident in Great Britain, for any House of Trade, of which no partner shall be resident therein, you are to prepare and deliver the statement of return jointly for them, and the joint assessments will be made in the partnership-firm; and no separate statement will be allowed in any case of partnership, except for the partners separately claiming an exemption or allowance as pointed out in Chap. XIII. or of accounting for separate concerns. Every statement of profits to be delivered by you on account of any Corporation, Fellowship, Fraternity, Company

or Society, or other person or persons, shall include every source of profit, and be delivered in that Division where such Person, Corporation, &c. would be chargeable, if acting on his or their own behalf; and you are chargeable with the whole of the duties in one and the same division, and by the same Commissioners.

Where any Creditor, on any rates or assessments not chargeable by the Act as profits, shall be entitled to Interest of Money, it is lawful to charge the proper Officer having the management of the accounts with the duty payable on such interest; and every such Officer is answerable for doing all acts necessary to a due assessment of the duties and payment thereof, as if such rates and assessments were profits chargeable under the Act; and such Officer would be in like manner indemnified for all such acts, as if the said rates and assessments were chargeable.

In default of the Owner or Proprietor of profits or gains arising from Foreign Possessions or Foreign Securities, or in the British Plantations in America, or in any other of His Majesty's dominions, being charged, the Trustees, Agent or Receiver thereof will be charged for the same, and will be answerable for the doing all such acts requisite in order to the assessing such profits to the duties and paying the same, whether the person or persons to whom the said profits belong be resident in Great Britain or not.

Where any person chargeable with the duties is under twenty-one years of age, or where any person so chargeable dies, the Parents, Guardians or Tutors of such Infant, upon default of payment by him or her, and the Executors or Administrators of the person so dying, are

charged with the payments which such infant or deceased person ought to have made. And if such Parents, &c. refuse or neglect to pay, it is lawful to proceed against them in like manner as against any other person making default of payment of duty. And all Parents, &c. making payments as aforesaid, are allowed all sums paid for such Infants in their accounts, and all Executors, &c. are allowed to deduct all their payments out of the assets of the Deceased Person.

If you act as Steward, Trustee, Agent or Factor for any School, Hospital or Alms-house, or other Trust for Charitable Purposes, you are to claim an allowance of duty on the rents and profits of messuages, lands, &c. belonging to any such school, &c. and applied to charitable purposes by your Affidavit (on un-stamped paper) before any Commissioner of the District in which you reside, stating the amount of the duties chargeable, and the due application of such rents, &c. or a portion thereof, for charitable purposes only; which Affidavit you will lay before the Commissioners for Special Purposes in London, who will grant the allowance of such duties (without vacating, altering or impeaching the assessment made on or in respect of such properties, and which assessments are in force and to be levied notwithstanding such allowances) by Certificate to the Receiver-General of the county or place where the property in respect of which the allowances are granted is situate; who is thereupon to pay the amount to the party entitled; and where the property is in different counties, the Special Commissioners are to certify the whole amount in the county where the greatest assessment has been made.

Any Guardian, Trustee, Attorney, Agent or Factor, may make any claim for exemption or allowance or appeal, as pointed out in the concluding Chapter of this Book, on account of others, in case of satisfactory proof that the parties are unable to attend in person ; or such claim may be made by any person acting in either of those characters, in such manner as he or she may act for others, for the purpose of being assessed on their account in the first instance, as before-mentioned. And if any person acting in either of those characters has been assessed in one district to the duties charged on him, and again assessed in another district for the same cause and on the same account, such person may apply to the Commissioners who made the first assessment, to be relieved from such double assessment, by Certificate under their hands of the amount of the assessment ; which Certificate shall be given *gratis*, and upon production thereof to the Commissioners of the other District, they are to cause the double assessment, in the whole or part, to be vacated, so that such Person shall remain not charged by more than one assessment.

All persons acting on account of others are liable to the same Penalties for not making due returns of the profits, &c. they are so accountable for, as for their own.

CHAP. XIII.

On Exemptions and Allowances.

IN case of your Annual Income not exceeding £50, or, if exceeding that amount and not above £150, and arising from the particular properties or profits on which exemptions and allowances are grantable; the fourth and last paper, viz. "No. 5, 4th Part," particularly requires your notice, relating wholly to Exemptions and Allowances, for neither of which can you put in any claim on account of Income, if it exceed £150. (unless you are a Labourer or Mechanic, &c.) and is *not* made up of some or one of the following description of Properties and Profits, viz.

1st. Profits arising from any properties belonging to any Ecclesiastical Person in right of his Church, or by Endowment, or from Tythes taken in Kind, Dues and Money-Payments in Lieu of Tythes, (not being Tythes arising from Land) and Tiends in Scotland, or from Tythes arising from Lands, if compounded for, and of all Rents and other Money-Payments in lieu of Tythes arising from Lands, and Stipends of Licensed Curates.

2d. Profits arising from the Occupation of Lands and Tenements chargeable under Schedule B.

3d. Profits arising from any Trade, Manufacture, Adventure or Concern in the nature of

Trade, or from any Profession, Employment or Vocation, chargeable under Schedule D, as stated in Chap. X.

- 4th. Profits arising from any Office or Employment chargeable under Schedule E.
- 5th. The Amount of any Pension or Stipend payable out of the Public Revenue, also chargeable under Schedule E. And
- 6th. Any Annuity or Annuities for Life, or for Terms of Years, arising out of any kind of Property whatever, or out of Profits respectively belonging to any other Persons, Bodies Politic, &c. or which are limited for the use of or in trust for any such other persons, bodies, &c. to take effect after the determination of such annuity or annuities, provided that such annuity, &c. has been charged on such property or profits by any Will or Deed whereto the claimant is *not* a party, and is payable by virtue of such will or deed to such claimant.

Every person therefore whose annual amount of income, estimated according to the Act, and consisting of some or one of the above particulars, is less than £150, or who is liable to the payment of duty by way of deduction in respect thereof, will be entitled, on proving as hereafter mentioned that such Income doth not exceed £50, to *exemption* from payment of the duties charged, or such of them as shall have been charged on the properties or profits so particularized, or any of them, and from all payments, by way of deduction, in respect of any properties of the same description. And, in all cases where such Income exceeds £50, and is less than £150, the claimant is entitled to an allowance out of the duties charged on such enumerated properties or profits, or any

of them, or payable in respect thereof as aforesaid, at and after the rate of 1*s.* for every 20*s.* by which the Income proved and allowed according to the Act is less than £150, and in that proportion for any less sum than 20*s.* Provided that the duties charged on the properties or profits so above described, or payable in respect thereof as aforesaid, be *sufficient* for that purpose, and so far as the said allowance can be satisfied out of *the same* duties.

All such claims are to be made and proved according to the directions of the Act; and no exemption or allowance can reduce, alter, or in any manner affect or impeach the rate or amount of duty charged or to be charged on any kind of property or profits *not* included in the above-mentioned list of particulars.

Taking it for granted, therefore, that your Income, in respect of which you purpose claiming exemption or allowance, is of one or another of the above descriptions, you have to fill up such last paper, "No. 5, 4th Part," by inserting in the first division of the second side thereof the particulars of your claim. For instance, if your circumscribed income be an aggregate one, arising from two or more sources, and part of it arises "As Owner of Lands or Tenements," you have under that title to write the Parish and County, or Parishes and Counties, in which such property is situate; and the amount of the nett annual profits (in figures) in the adjoining column, after deducting the Amount of any Unredeemed Land-Tax, and a year's payment under a *public Rate* for Draining, &c. (if any) and also the amount of Landlord's Duty charged upon such property, from the gross value, and the residue is the amount of that part of the income. Thus, if as such

Owner, you are entitled to a Rent of £40, and pay or allow £5 per year Land-Tax, and £5 per year for such Draining, &c. you deduct those two sums from the £40, leaving £30, whereon you pay £3 Landlord's Property-Duty; which being also deducted, leaves £27 to be inserted in such money-column, as that branch of your income.

If you are Owner *and Occupier* of those Premises, you will in the same manner insert the Parish and County where situate, and in the same money-column the Amount of Income from the two sources of the Ownership and Occupation. For instance, the above sum of £27 on the first account, supposing the annual value to be £40, and £30 in respect of the Occupation, making £57 to be set down in the whole; the rule being to take three-fourths of the Rack-rent or Annual Value on which the duty under Schedule B. has been charged, as the standard of the *Occupier's* income, as such occupier; and if in Scotland, at one half of such rent or annual value. Should the premises, however, be Tythe-free, you are entitled to make a deduction of one-eighth part of the annual value, before you ascertain the Occupier's income, by taking three-fourths of the value, i. e. deduct £5. as one-eighth of £40 from that sum, and £35 are left, three-fourth parts of which are £26 5s. to be added to the Owner's part of £27. making the whole income in that respect £53 5s. instead of £57.

If your income arise as Occupier or Tenant of Premises, you are of course under that title to write where situate, as above, and the amount of Tenant's Income, calculated in the same manner as last mentioned, in the adjoining column.

In cases of Joint Occupancy of Lands, none except the Occupiers personally acting therein are admitted to make such claims, and in case only of declarations of proportions or profits, in order to separate assessments.

And if you are Compounder or Lessee of any Tythes, the Parish and County where the Lands in question are situate are to be inserted under that title, and the Amount of Income therefrom, in the said adjoining column, taking such Income for the purpose of exemption or allowance to be *one-fourth* part of the amount of the Rent, or annual value thereof, that being the rule laid down by the Legislature for its estimation.

If you derive any income from the Public Funds, you will insert the exact Yearly Sum received, in the money-column opposite the printed words, "From Public Funds," in the same division.

If from Trade, Profession, or Employment, you are likewise to insert in the same money-column, opposite those words, the Amount of such income, after making any deductions, allowed by the Act, but none other.

In cases of Partnership, none except an Acting Partner is admissible to claim exemption or allowance, and in a case only where such Partner shall have declared his proportion of profits in order to a separate assessment.

If your Income in either the whole or part arises from any Office, you will in the proper line for it write down from *what* office, and the amount of the Annual Profit in the money-column opposite.

If from interest of Money, Rents, Annui- ties, or other Sums payable yearly, for which you are to allow and deduct the duty, you will

in the proper line or lines, state from whom you receive the same, and in the same money-column the Amount or Amounts of income therefrom, and distinguishing one Amount from another. And

If from other Property or Profits of whatever description not coming under any of the foregoing heads, you will in the same manner insert the real Amount thereof in the money-column.

And then, adding up all the Amounts (if more than one) enter the Total in the same column, opposite the word "Total."

This being done, if you make any payments, such as Interest, Annuities, or other annual payments, out of your property or profits, reserved or charged thereon, and consequently diminishing the amount thereof, you are entitled to have the amount of such payments deducted from the total amount of such profits, and are therefore, under the words, "By Deductions out of above Profits," to insert the Name or Names of the Person or Persons to whom you make such payment, and where he, she or they reside, and the sum or sums (in figures) distinguishing them, opposite. And if you shall have paid any Premium or Premiums of Insurance, on your own or your Wife's life, in the preceding year, and included it in the amount of income, you are to set down the full amount of such premium opposite the words "By Premiums of Insurance paid in the preceding year;" because you are entitled to a further allowance of duty in that respect, bearing the same proportion to the amount of duty charged as the amount of such premium bears to the amount of income proved.

The total Amount of such Deductions you will carry out to the column of profits, and subtract the same from the amount of profits, placing the Balance underneath, in figures.

After all, you will fill up the column next to the money-column by inserting your Name opposite the pronoun "I" at the beginning, and again opposite the word "Signed" at the end, to make your claim complete.

A general rule is, that no person acquiring an income by means of the Occupation of Lands, or of any concern in working the soil, or by means of any Trade, Manufacture, Adventure or Concern in the nature of Trade, or of any Profession, Employment or Vocation, shall be denied the benefit of such claim by reason of the property or capital *bona fide* employed in or about the concern, or under the pretence that the profits arising therefrom are derived from the property or capital so employed.

If you are a Labourer, Artisan, or Hand-craftsman, Mechanic or Manufacturer, and your income has arisen wholly from labour at daily or weekly wages, or by the task or piece, and such wages have not exceeded in any one week in the preceding year, or in any subsequent week previous to the assessment, the sum of 30s. (except from employment in husbandry in time of harvest) you are to fill up the lowest division of the second side of paper "No. 5, 4th Part," under the title "No. I, Declaration of Labourers, Mechanics, &c." by first writing your Name opposite the letter "I" at the beginning; then the nature of your employment, such as "Labourer in Husbandry," or other work (*naming it*), or "Artisan,"

"Handicraftsman" or "Mechanic" in the trade of (*naming it*) or "Manufacturer" in the manufacture of (*naming it*) for daily [or weekly] wages; then the actual amount of such wages in the next blank space—then the name of your Master and place of Residence; and under the words that follow, if you can justly make the declaration, you are to write your Name opposite the word "Signed."

In the next place you are to get your Master for whom you worked throughout the preceding year to fill up the Declaration underneath, by writing his Name opposite the letter "I" in the same manner, and his Residence—then the nature of your employment—then the whole or the greatest part of the year for which you worked for him; and at the foot thereof he will put his Name opposite the like word "Signed." If you worked for separate Masters within the time, you should obtain similar certificates from each.

The purpose of these certificates is to obtain your exemption from any duty on such your income, if entitled to it. And if it appear that you are not in the receipt of any sum arising from any other source, the Commissioners are, without further account, to adjudge the income so arising from the preceding year, as not amounting to £50. and to grant an exemption from duty accordingly.

If the amount be more than 30s. in any one week, except for employment at harvest, this exemption cannot be granted; but you may claim any other exemption or allowance notwithstanding, in the proper forms; and no person of the last-mentioned description shall be excluded from the benefit of the exemption in

respect of such wages as aforesaid, by reason of deriving a part of his income from *property* not exceeding the annual value of £5.

You are to make such claim accordingly within the time prescribed by the notice to you for making your return (or within such further time as the Commissioners shall for special cause assigned allow); and if the Surveyor or Inspector doth not object to your declaration in that respect, within forty days or such further time as the Commissioners on just cause shall allow him to make such objection, the Commissioners are to grant such exemption or allowances as the case requires, in manner hereafter-mentioned, without altering the assessment; but in case the Surveyor or Inspector object thereto in writing, suggesting that he has reason to believe your income is not truly declared therein in any particular, or not conformable to the assessment thereupon, then, unless the major part of the Commissioners present at the time of taking such objections into consideration shall see cause to disallow the same, the merits of such claim are to be heard upon appeal, subject to such rules and penalties as other appeals, treated of in Chapter XV.

If you claim exemption or allowance in respect of any deductions to which any annuity of the above description, and payable to you, may be liable, you are within the like period and in like manner to deliver to the Commissioners of the District a further Declaration of your intention to make such claim, which shall specify the annual amount of every such annuity, and the name of the person by whom the same is payable; and such claim is to be

proceeded upon in such manner as above mentioned, but not to be allowed unless you produce to the Commissioners the Will or Deed under which the payment is made, or such parts thereof as relate to any such annuity, or an Attested Copy of such will or deed, or such parts thereof as aforesaid, (*on which no stamp is requisite*); and no such claims can be allowed until such will or deed or attested copy shall have been seen and examined by the Commissioners for Special Purposes (in London), and sanctioned by their judgment and determination as coming within the meaning of the Act; and if so sanctioned, the Commissioners of the District are to proceed to determine on such claim, and on allowance thereof, to grant to you a Certificate in the form prescribed. And if you derive your income for which such exemption or allowance is made from annual payments by different persons, a separate Certificate is to be delivered to you for each of such separate payments, in due proportion, in order that each certificate may be separately applied, as necessary.

If any person be guilty of any fraud or contrivance in making such claim, or in obtaining any such exemption or allowance, or fraudulently conceal or untruly declare any income or amount of income, or make a second claim for the same cause, he or she will forfeit £50. and triple the duty chargeable in respect of all the sources of income of such person or persons, and as if such claim had not been allowed.

Every such claim must be made to the Commissioners of the District wherein the claimant resides, whether such claimant be personally

charged in such district or not; except where the whole income of such claimant arises from an office or employment of profit, the duties whereon are cognizable before the Commissioners of a Department of Office, or from a pension or stipend; in all which cases the claim may be made to and granted by such Departmental Commissioners. And if such claimant be out of Great Britain, an Affidavit, stating the several matters required by the Act, taken before any person having authority to administer an oath in the place where such claimant resides, in any matter relating to any part of the public revenue of Great Britain, may be received by the respective Commissioners for executing the Property-Act, in relation to the assessment on which such claim shall be founded.

And the Exemptions and Allowances are directed to be granted according to particular rules, as follow.

1st. In all cases of claims made in respect of the gross charge on property or profits of the claimant arising wholly in the parish or place where the claimant resides, the Commissioners are, where exemption is called for, to exclude the whole sum from the nett assessment; and in cases of allowances, to include in the nett assessment the difference only between the gross assessment and the sum allowed, and to cause certificates of the nett assessment to be delivered to the Collectors, but without discharging in any other manner the gross assessment.

2d. In all cases where any such claim is made in respect of the charge on property or profits of the claimant arising in different parishes or places in the same district, and by the same

Commissioners, or partly on such property or profits and partly in respect of any annuity arising out of property or profits charged upon any person other than the claimant, and the assessment on such claimant in any one parish or place in the district where such claim is made, be sufficient to answer the amount of allowance made to such claimant, it is lawful for the Commissioners to allow the whole sum in such one parish or place, and to proceed therein, as in the first rule, as if the whole property or profits had arisen there; and where one such assessment shall not be sufficient, they are to apportion the allowance between two or more such assessments, in such manner as they think fit, without regard to the proportion in which such property or profits in each such parish or place has been assessed, and so as to give relief to the party in the most convenient manner. And where such claim is made in respect of the charge on property or profits of the claimant arising in different parishes or places, situate in different districts of Commissioners, and the assessment on such claimant in the district where such claim has been made is not sufficient to answer the allowance to be made to such claimant, then the Commissioners by whom the claim shall have been allowed are to grant a Certificate for such part of the allowance as cannot be made in that district where the claim is allowed; and in case the deficiency can be satisfied out of any assessment on the claimant in any other district, the Commissioners are to grant a Certificate thereof, stating the amount of the allowance to be made in such

other district; all which Certificates are to be delivered to the Collector of the respective parishes where the assessment to which such certificates relate have been made; and the Collector or Collectors are to receive such certificates as cash, and act in all respects as if the amount of the allowance in each parish or place had been in proportion to the assessment therein.

3d. In all cases where any such claim is made in respect of any Annuity or Annuities above described, arising out of any property or profits charged upon any person or persons other than the claimant, either wholly or in part, and which cannot be satisfied out of any assessments made on the claimant according to such second rule, or in respect of any such annuity charged on public annuities, dividends and shares, the duty whereon shall be paid by the respective persons and corporations entrusted with the payment of such public annuities, &c. a Certificate, signed by the Commissioners, granting the allowance, is in each case to be delivered to such claimant in respect of such annuity or annuities, specifying the amount of income of the claimant, the amount of such annuity or annuities, and by whom payable, and the amount of the allowance in respect of such annuity or annuities.

4th. Every Certificate granted according to the last rule, except for annuities payable out of public annuities as aforesaid, in the actual receipt of the annuitants, is to be delivered by the claimant to the person by whom the annuity or annuities mentioned therein shall be payable, at the time of such payment, and

is an authority to the claimant to demand the amount of such allowance, together with the residue of such annuity or annuities, without further deduction thereout. Then such sums, if any, as after such allowance remain chargeable in respect of such annuity or annuities, and every such certificate granted in respect of any annuity payable out of public annuities as aforesaid, in the actual receipt of the annuitants, is to be delivered by the claimant to the Collector or Collectors of the parish or place where such annuitants reside, by indorsement under the hand of such person, and shall be received by such Collector as cash.

5th. Every Certificate granted under the third rule and delivered to the person mentioned therein as liable to the payment of such annuity or annuities, is to be transferred to the Collector or Collectors of the parish or place where such person resides, by indorsement under the hand of such person [*of his or her name*] and shall be received from such person by such Collector as cash on account of the person indorsing the same.

6th. Every Certificate granted under the authority of the Act and delivered to any Collector or Collectors as aforesaid, either by the Commissioners or the person named therein, shall be applied in discharge or satisfaction of so much of the duty charged upon, and then payable by, the person delivering the same, or on whose account the allowance was granted. And in case the assessments on such persons shall have been fully paid and satisfied before the delivery of such certificates, or in case such assessment shall be

insufficient, or no such assessment shall have been made on such persons, in the parish where such certificates shall be delivered, the Collector or Collectors shall pay to the persons transferring such certificates by indorsement, the amount of the allowances granted thereby, or so much thereof as shall be necessary.

No claim in respect of any annuity or annuities shall be admitted, unless the claimant shall have duly returned or caused to be returned, within the time in the Act limited, and in the manner therein directed, (*as respectively pointed out in the preceding Chapters of this Book*) a full, true and perfect statement of the whole of his or her income, estimated according to the Act, to the best of his or her judgement or belief, from whatever source or sources the same may arise; and also a Declaration annexed to such statement, of his or her intention to make such claim.

Coparceners, Joint Tenants and Tenants in Common of the profits of any property whatever, and any Joint Tenant, or Tenants of Lands, in Partnership, being in the actual and joint occupation thereof in partnership, and entitled to the profits thereof in shares, and personally labouring therein or managing the same, and any Partners carrying on trade or exercising any profession together, and entitled to the profits thereof in shares, and personally acting therein, may severally claim such exemptions or allowances, according to their respective shares and interests, in manner before directed; and such claims being duly proved, to the satisfaction of the Commissioners, may be proceeded upon as in cases of several in-

terests—provided that the profits so arising shall not in any case be charged separately to the duty in respect of the Occupation of lands, where lands shall be let or under-let, without relinquishing the possession by the Lessor, or where the Lessee or Lessees, Tenant or Tenants, shall not be exclusively in the possession and occupation of the lands so leased.

On any claim of exemption or allowance, if the Commissioners think fit to require a verification of the statement or declaration so delivered as aforesaid, they are to give notice to the claimant to appear before them for the purpose; who is required to appear before them accordingly, and on oath or solemn affirmation, to be administered by one or more of the Commissioners and signed by the claimant, to verify the contents to the best of his or her judgment or belief—Provided that the claimant shall be at liberty to amend such declaration or statement, or any part thereof, before he or she shall be required to take such oath or affirmation.

All Public Annuities whatever, payable in Great Britain, out of any public Revenue in Great Britain, or elsewhere, and all Dividends and Shares thereof, are also charged with a ten per cent. Property-Duty, except the following cases of exemption, viz.

Ist. The Stock or Dividends of any Friendly Society, established under the Act of the 33d of His present Majesty, intituled "An Act for the Encouragement and Relief of Friendly Societies,"—provided the property therein shall be duly claimed and proved by any Agent or Factor on behalf of any such Society, or by any Member thereof, before

the Commissioners for Special Purposes, as hereinafter mentioned.

2d. The Stock or Dividends of any Corporation, Fraternity, or Society of Persons, or of any Trust established for Charitable Purposes only, or which, according to the rules or regulations established by Act of Parliament, Charter, Decree, Deed of Trust, or Will, shall be applicable by the said Corporations, &c. or by any Trustee or Trustees to Charitable Purposes only, and in so far as the same shall be applied to charitable purposes only, or the Stock or Dividends in the names of any Trustees, applicable to the Repairs of any Cathedral, College, Church, or Chapel, and to no other purpose, and in so far as the same shall be applied to such purposes, —provided the application thereof to such purposes be also duly proved, as pointed out in the last clause.

3d. The Funds in the names of the Commissioners for the Reduction of the National Debt.

4th. Stock in the name of the Treasury.

5th. Annuities, &c. belonging to Foreigners not resident within His Majesty's Dominions.

6th. The Stock or Dividends belonging to His Majesty, or to any accredited Minister of any Foreign State resident in Great Britain.

The claims for these exemptions are to be made according to the following rules :

1st. Every claim must be made *in writing*, in such form as the Commissioners for Special Purposes (in London) shall direct ; who are to require the same to be verified on the Affidavit of the claimant, as thought necessary ; and who have authority to demand and re-

quire from such person or persons, as they think proper, to examine touching such claim, true answers upon Oath to all such questions as they think material.

2d. Whenever those Commissioners have allowed any such exemption, they are to certify the same to the Bank of England. And the Certificate of such Commissioners is an authority to the Bank to pay the amount of the sums so certified to the respective claimants, or to the Attornies and Agents who shall have been authorized to receive the said Annuities, Dividends, and Shares on behalf of the said Claimants.

3d. Whenever the stock for which any exemption has been obtained, or any part thereof, shall be transferred or assigned to any person or persons, Corporation, Company or Society, the exemptions cease—Provided that where the whole shall not be so transferred or assigned, it is lawful for the same Commissioners, on similar proof, to grant a like certificate for the purpose of exempting the remainder of such stock, and so from time to time, so long as any part of the stock continues to be liable to the exemption.

Any person making a false and fraudulent claim to such exemption, either in his or her own behalf, or in behalf of any other, will forfeit to His Majesty £500; and if on his or her own behalf, he or she is liable to be assessed in triple the amount, to be charged on the said Annuities and Shares.

Proper Forms in which the last mentioned claims must be made are kept at the Tax-Office, Somerset-House, London, and readily to be procured by written or personal application to the Secretary, M. WINTER, Esq. and

then filled up according to the nature of the case, and sent to such Commissioners for Special Purposes ; who will thereupon transmit to the claimant the necessary questions, and affidavit above alluded to, and upon receiving the same back through the medium of the Tax-Office with satisfactory answers, will grant the requisite Certificate, for receiving the duty at the Bank.

No person on whom the Assessor has not served a particular notice for a Return is liable to the penalties for not delivering a statement, if it shall appear to the Commissioners of the District on inquiry that such person is entitled to be exempted from the payment of all and every the duties granted by the Property-Act.

CHAP. XIV.

ON SURCHARGES.

IF after all your care to make a full and sufficient return of every thing required of you by the notices, the same should prove unsatisfactory, I purpose in this Chapter to lay before you the ground upon which objections to returns, and further charges, may *properly* be made, as well as those whereon objections would fail of support, but which objections, for want of the subject being clearly elucidated to the Commissioners, might obtain their full effect in double duties, if not fines or penalties, and you become an innocent sufferer.

In the first place, every Surveyor and Inspector must, in making any increase of duty, either on the returns of individuals or parties, or on the estimates of Assessors, or Assessments made by Commissioners, observe the following rules and directions for their government; and are subject to the several provisions therein contained.

1st. They are empowered and strictly enjoined to inspect and examine all returns of Lists, Statements, Declarations, Accounts and Estimates, made by any person chargeable to the duties, or by any Assessors, and also all first Assessments for any year, as well before as after.

the Commissioners shall have signed and allowed them ; and if, discovering any error or wrong amount or computation of duty therein, or that any person who ought to be charged with the duties has duly made a return, but been omitted to be charged, or has been under-rated in such first Assessment, and that the return contains matter sufficient whereby to rate such Person therein to the full duties, the Surveyor and Inspector must, if before such allowance, correct and amend the Assessment by charging the full duty ; and if, after allowance by the Commissioners, any Surveyor or Inspector discover by examination of the Assessment or otherwise, that any Person chargeable has not made any return or omitted any Person, or property, or profits, or the amount or value thereof, or any part thereof, or any matter which ought to have been returned, so that the party has not been charged to the full amount of duty in consequence, or that any exemption, allowance, or deduction not allowable has been claimed, then it is lawful for the Surveyor or Inspector to certify the same in writing to the Commissioners, together with an account of every such default, omission, or claim, and the name or description of the Person or thing not returned or omitted, to the best of his knowledge and belief, and also the full amount of the single duty by which the Assessment ought to be increased, explicitly stating the particulars in respect of which such charge has been made. And the Commissioners, upon receiving any such Certificate, and upon oath being first made, either by the Inspector or Surveyor or any other credible witness or witnesses who shall have served the same, that a notice to the following effect was duly served, are required to sign and allow such Certificates, and

to cause supplementary Assessments to be made accordingly, subject to appeal.

2d. The Inspector and Surveyor must give to every Person so charged, or leave at his or her last or usual place of abode in the district where charged, or on the premises charged, or at the office, or with the proper officer, of any Corporation, Company or Society, as the case requires, Notice in writing thereof, and the amount of duty to be included in the Certificate of charge, and the particulars thereof.

3d. No Assessment made by any Assessor, nor any charge by any Surveyor or Inspector upon such Assessment, can be impeached or affected by reason of any mistake or variance in the Christian or surname of any person liable to the duties, nor by reason of any mistake in the description of any property or profits, or of any servant or person, or of any matter for which the party shall be liable to duty, nor by reason of any mistake in the amount of duty charged, nor by any variance between the notice and Certificate of charge, whether such mistake &c. appear in or arise from the notice or Certificate; but all such Assessments and charges are valid, notwithstanding provided the notice of such charge shall have been duly served, and the Certificate contain in substance and effect the several particulars on which such charge shall have been made and the duties intended to be described are chargeable upon such person, and every such charge shall be heard and determined upon the merits.

Any Person receiving such notice, on occasion of his or her having neglected to make any return, at any time previous to the time appointed for hearing Appeals next after the receipt of such notice, should deliver to the Surveyor or Inspector concerned, a true and perfect List,

Statement, Account, or Estimate of all matters required to be returned, so that he or she may therefrom be charged the full amount of duty, with a declaration to be made thereunder by the party, expressing that he or she was not at home at the time appointed for fixing or delivery of general or other notices for making returns, nor between that day and the time limited for making the same, and hath not received nor had any knowledge of any such notice, or was disabled by sickness from making a return, or that the non-delivery of such return was occasioned by the following mistake or accident without intention to defraud the revenue viz. [*here set forth the cause of such default*] and that the return to which the declaration of the party is annexed [*or subjoined*] is a full, perfect and complete return of all matters and things required of such party by the Property-Acts, to the best of his or her judgment and belief; which declaration and return must be severally and respectively signed by the party and attested by one credible witness at least present, being an inhabitant of the same ward, parish or place where the party resides, and who also shall be assessed to the Property-Duty for the same place; or if in the same place there be no inhabitant competent to be such witness, then a like person in an adjoining Parish must be such attesting witness. And if the Surveyor or Inspector shall be satisfied with such List, &c. and declaration, he shall certify the same to the Commissioners, with the amount of duty to be charged; who shall thereupon cause the Assessment, according to such Certificate, to be made in single duty; but if upon examination of such list or return and declaration, the Surveyor or Inspector shall see just cause for objection thereto, he shall certify the

ground of such objection to the Commissioners, who, shall thereupon cause the Assessment to be made in double duty, and from which charge no abatement shall be made on any pretence, unless on Appeal, as pointed out in the following Chapter ; of which objection notice must be given by the Surveyor or Inspector, to the person to be charged thereby, together with the cause of his objection to such return and declaration ; and the Commissioners are to determine the said objections on the merits, without further notice of Appeal from the party so charged. If any Person, to whom such notice of charge has been served on occasion of his or her having omitted in the return before made for the same year, any Person, Property, Profits, Description, Statement, Account, or Estimate, or any matter which ought to have been contained in such former return, or which is mentioned in such notice of charge not to be contained in such former return, or of having claimed any exemption, allowance, or deduction, not allowable, or of having returned the amount or value of any Property or Profits, at less than the sum which ought to be returned, *consent or agree* to such charge, it is lawful for him or her to give Notice thereof, in writing to the Surveyor or Inspector, who shall certify such consent, and the amount of single duty chargeable, to the Commissioners ; according to which certificate the consenting party is to be assessed in the single duty ; and such consent is equivalent to an amended return and declaration above-mentioned. Or any such Person so charged, if *not* consenting or agreeing, may amend such former return, by delivering to the Surveyor or Inspector as aforesaid a supplementary List, Statement, Account or Estimate of the above description, according to the nature

of the case; to which a declaration in writing must be annexed or subjoined, stating the grounds and cause of each omission in such former return, and of each claim of exemption, allowance, or deduction, and also that the return to which the declaration is annexed (or subjoined) is a full, perfect and complete return of all moneys and things required of him or her by the Property-Acts to which the said charge relates, to the best of his or her judgement and belief; and that such omission or claim was not made with intention to defraud the revenue; and which return and declaration must severally and respectively be signed and attested in the same manner as above directed in the last preceding case. And the Surveyor or Inspector is thereupon at liberty to certify his satisfaction therewith, or his objection thereto, to the Commissioners; according to which the party is to be assessed, either in the single duty if satisfaction be certified, or in the double duty, in the manner directed in the last preceding clause, in cases where no previous returns have been made, and as the case requires — subject to the like power of Appeal from such objection, and to the like proceedings in all other respects as there specified.

Every Person charged by the Certificate of any Surveyor or Inspector must be allowed the full period of ten days after service of the Notice of such charge, to deliver his or her amended return to such Surveyor or Inspector; and no Certificate of such charge shall be signed or delivered by the Commissioners before the expiration of such ten days.

No return or declaration to be required of any Property, or Private matter, or thing of which the party charged has made a due return for the

same year ; but such party is at liberty to give Notice in writing to the Surveyor or Inspector, that he or she abides by such former return, or may make out and deliver a supplementary return and declaration, in the manner before directed ; which, together with the return before made, subject to the objection of the Surveyor or Inspector in manner aforesaid, shall be deemed full, perfect, and compleat returns, if the same together include all matters and things for which the party shall be chargeable. And no Person is liable to the Penalties directed by the Act for any matter or thing which has been returned by him or her in manner aforesaid, so that he or she might have been fully charged to the duty, but only for such matters or things as have not been returned by him or her in manner aforesaid.

The objection of any Inspector or Surveyor to the estimate of any Person or of any Assessor, or to any Assessment in pursuance thereof, does not preclude him from afterwards charging the same Person for any other property or profits not included in the Estimate or Assessment before objected to and determined by the Commissioners on Appeal, nor preclude any Surveyor or Inspector from afterwards objecting to any other Estimate or Assessment, or from afterwards charging any other Person in the same or any other Parish or place in the same or any other division, in respect of any property or profits not before objected to and determined as aforesaid. And the Commissioners are to sign and allow such last-mentioned objections and charges according to the directions of the Act, provided all the same be made within the limited times.

Every objection to Estimates must be made before the first Assessments thereon shall have

of the case ; to which a declaration in writing must be annexed or subjoined, stating the grounds and cause of each omission in such former return, and of each claim of exemption, allowance, or deduction, and also that the return to which the declaration is annexed (or subjoined) is a full, perfect and complete return of all matters and things required of him or her by the Property-Acts to which the said charge relates, to the best of his or her judgment and belief ; and that such omission or claim was not made with intention to defraud the revenue ; and which return and declaration must severally and respectively be signed and attested in the same manner as above directed in the last preceding case. And the Surveyor or Inspector is thereupon at liberty to certify his satisfaction therewith, or his objection thereto, to the Commissioners ; according to which the party is to be assessed, either in the single duty if satisfaction be certified, or in the double duty, in the manner directed in the last preceding clause, in cases where no previous returns have been made, and as the case requires --- subject to the like power of Appeal from such objection, and to the like proceedings in all other respects as there specified.

Every Person charged by the Certificate of any Surveyor or Inspector must be allowed the full period of *ten days* after service of the Notice of such charge, to deliver his or her amended return to such Surveyor or Inspector ; and no Certificate of such charge shall be signed or allowed by the Commissioners before the expiration of such ten days.

No return or declaration to be required of any Property or Profits, matter, or thing of which the party charged has made a due return for the

same year ; but such party is at liberty to give Notice in writing to the Surveyor or Inspector, that he or she abides by such former return, or may make out and deliver a supplementary return and declaration, in the manner before directed ; which, together with the return before made, subject to the objection of the Surveyor or Inspector in manner aforesaid, shall be deemed full, perfect, and compleat returns, if the same together include all matters and things for which the party shall be chargeable. And no Person is liable to the Penalties directed by the Act for any matter or thing which has been returned by him or her in manner aforesaid, so that he or she might have been fully charged to the duty, but only for such matters or things as have not been returned by him or her in manner aforesaid.

The objection of any Inspector or Surveyor to the estimate of any Person or of any Assessor, or to any Assessment in pursuance thereof, does not preclude him from afterwards charging the same Person for any other property or profits not included in the Estimate or Assessment before objected to and determined by the Commissioners on Appeal, nor preclude any Surveyor or Inspector from afterwards objecting to any other Estimate or Assessment, or from afterwards charging any other Person in the same or any other Parish or place in the same or any other division, in respect of any property or profits not before objected to and determined as aforesaid. And the Commissioners are to sign and allow such last-mentioned objections and charges according to the directions of the Act, provided all the same be made within the limited times.

Every objection to Estimates must be made before the first Assessments thereon shall have

been signed and allowed by the Commissioners, and not afterward.

And no charge made upon any Assessment can be allowed or signed unless the Certificate thereof shall be delivered to the Commissioners before the end of three calendar months after the 5th of January in the year of Assessment, in case such Assessment shall have been made on or before such 5th of January; or if not made by that time, then unless so delivered within three calendar months after such Assessment shall have been made, except in the cases following, viz.

If any Person shall have neglected to make a return of property or profits and no Estimate thereof nor any Assessment thereon shall be made for any year, the Surveyor or Inspector may, on discovery thereof, at any time within twelve calendar months after the end of the year wherein such return ought to have been made, charge such Person to the amount which ought to have been returned, in like manner as such Person might have been charged within the year of Assessment; and every Assessment thereupon made is to be added to the current Assessment of the place.

And if any Surveyor or Inspector discover that any Person hath been under-rated by, or omitted to be charged in any Assessment for the first year, or hath obtained an exemption or allowance for the first year, which ought not to be allowed as for the second year, it is lawful for him to surcharge such Assessment for such second year, in the same manner as he is authorised to surcharge the Assessment for the first year under the like circumstances; but such surcharge for the second year must be always in the *single* duty, and no increase can be made thereon unless the Commissioners are of opinion that the Assessment

for the first year was in the particular surcharged, occasioned through the wilful default or neglect of the party.

In case of a Person escaping by any falsehood wilful neglect, fraud, covin, or contrivance whatever, from taxation upon the profits of any distinct property, &c. for any year, the Surveyor or Inspector may, within the like period of twelve calendar months, charge such person double the amount of duty which ought to have been charged in the year of Assessment upon such distinct property, &c. and upon proof of such falsehood &c. to the satisfaction of the Commissioners, the Assessment on the double duty will stand good and be added to the supplementary Assessments of the current year of the place, and no part thereof can be remitted on any pretence whatever.

In case any Person on making a return shall wilfully and fraudulently declare any matter false or untrue, he or she, on being lawfully convicted, shall be judged guilty of a misdemeanor, and be committed to gaol for any term not exceeding six calendar months, and fined in such sum, not exceeding triple the amount of duty charged, as the court shall order.

If any Surveyor or Inspector shall knowingly or willfully, through favor, under-rate or omit to charge any Person or Persons, or shall be guilty of any corrupt, vexatious, and illegal practices in the execution of his office, he for every offence shall forfeit £100, and on conviction be discharged from his employment.

Also, if any Inspector or Surveyor shall wilfully make any false and vexatious charge or surcharge, or deliver to the Commissioners any false and vexatious certificate of charge, he shall forfeit to the party aggrieved any sum not exceeding fifty pounds, to be recovered by action of debt, &c. in a

superior court, with full costs of suit, besides all other penalties for corrupt, vexatious, or illegal practices in the execution of his office, subject to mitigation at the discretion of the Judge.

And besides incurring such penalties, if any Surveyor or Inspector shall willfully make any false and vexatious charge of duty, or deliver to the Commissioners any false and vexatious certificate of charge or of objection to any supplementary return, or be guilty of any fraudulent, illegal or unjust conduct in the prosecution of any charge of duty, or willfully neglect the duty of his office, or in any manner offend against the laws for regulating the duty of his office, and the same shall be proved on the certificate of any two or more of the Commissioners of the district, or on the affidavit or affirmation, to be taken before any one of the Commissioners, of any credible person or persons, to the satisfaction of the Honorable Board of Commissioners, Somerset-House, or any two or more of them, or by the confession of the Surveyor or Inspector ; it is lawful for such Board of Commissioners, for any such offence, to suspend the payment to such Surveyor or Inspector of all or any reward, emolument or advantage, which he would be entitled to, render the Act for any increase of duty or overplus above the rate of duty occasioned by his information or charge, or such part thereof as the Board of Taxes shall deem just and necessary, and finally to withhold the same, and direct it to be paid by the Receiver-General into the Court of Exchequer ; unless the Lords of the Treasury shall think fit to restore the same to the Surveyor or Inspector, or to mitigate the sum to be so withheld, &c.

CHAP. XV.

ON APPEALS

IT is earnestly hoped that by due attention to the preceding Instructions for filling up *returns*, every well-meaning person will be spared the trouble and vexation of appealing, as the only alternative for resisting overcharges ; but in cases where an Appeal is indispensable, I trust that by the following explicit statement of the true grounds upon which parties have a right to Appeal, the several legislative provisions made for their benefit in so doing, and the most direct mode of obtaining redress, will obviate the reluctance commonly felt to appear before Commissioners at all;---a task formidable enough, it must be confessed, under the anticipation that the case however apparently fair, may upon investigation be determined to possess no claim to relief; and because from the number of persons who usually appear without real occasion and the generally defective state of papers delivered in, the Commissioners (incapable at first of discriminating between the worthy and unworthy case) not unfrequently assume a severity of tone, for eliciting the truth, which, to the man of conscious rectitude may be painful ; but if a party, feeling himself aggrieved by overcharge, can find upon examination of the law, reduced to a familiar

shape, that he is upon *certain* ground, he may Appeal with confidence; and it would be surprising indeed if he failed of success.

The object of the present treatise is to inspire *him* with that confidence, and at the same time to repress the expectations of any one who may fallaciously conceive himself aggrieved, by clearly pointing out their relative situation, and as unequivocally to warn any person against *knowingly appealing on false ground* (towards whom I would be understood to shew no countenance, as they could scarcely meet with more than their desert.) by plainly stating the risks of double duties and penalties which such persons would incur by so iniquitous a pursuit.

Persons who Appeal *unjustly*, not only thereby injure themselves, in the consequent chagrin and expense, but those also whose claims are *well-founded*, in protracting the time of all others in attendance, as well as that of the Commissioners; which latter, so far as it becomes *necessary*, is so valuable a sacrifice to the interests of their country, that it ought not to be wantonly trespassed upon.

Were fairly intended appeals only to be made, very much of the inconvenience so generally complained of would cease, the Commissioners would become more accessible to those, who can ill afford the loss of their time in tedious attendance. And, in fact, would be enabled to pass through their office with ease and pleasure instead of the labour and fatigue heretofore so sensibly experienced.

In the first place, it is enacted that all Appeals against First Assessments of Commissioners, (by any party over-charged or over-rated thereby,) shall be entered, and due Notice thereof given to the Commissioners for General Purposes under

the Act within *fifteen* days after the date of the Notice of such first Assessment, to the party or parties charged therewith ; and all such Appeals shall be heard and determined as soon after such Notice thereof to the Commissioners as conveniently can be ; and for that purpose the Commissioners are to meet together within eight days after any such Notice of Appeal shall have been received by them, and so from day to day, or from time to time, at reasonable intervals, with or without adjournment, until all Appeals against such first Assessments shall be heard and determined ; of which day or days of Appeal the Commissioners shall cause Notice to be given to the respective Appellants. Provided that in every case where the party assessed shall be prevented from appealing within such limited time, or from attending in person at the time fixed for hearing the Appeals of such party, by absence or sickness, or other sufficient cause, to be proved before the Commissioners on the oath or solemn affirmation of the party, it is lawful for the Commissioners to enter such Appeal after the limited time, or to allow it to be made by any Agent, Clerk, or Servant, and admit other proof than the oath or affirmation of the party of the truth of the several matters required to be proved ; or to postpone the hearing thereof for such reasonable time as shall be necessary, so that no delay shall be thereby occasioned in the payment or collection of the sums contained in such First Assessment.

Upon the hearing of Appeals the party shall verify his or her Return upon oath or affirmation if (required) according to the best of his or her judgment or belief, but with liberty to amend the statement or schedule before he or she shall be required to swear or affirm thereto.

In every case where the Commissioners shall have made any increased Assessment upon the amount contained in the statement or schedule of the party to be charged, or shall at any time discover that any increase ought to be made, it is lawful for them to charge such party in any sum not exceeding double the amount, by which the duty shall have been increased viz. where the party shall have refused or neglected to deliver any statement or schedule then in a sum not exceeding double the amount, which, in the judgment of the Commissioners, such party ought to be charged, to be added to the Assessment ; and in case a statement or schedule shall have been so delivered, then in a sum not exceeding double the amount, beyond the amount contained therein, unless such party shall make it appear that the omission did not proceed from any fraud, covin, art or contrivance, or any gross or wilful neglect.

If any person who shall have delivered a statement or schedule shall discover any omission or wrong statement therein, he or she may deliver an additional one, rectifying the same, and shall not afterward be subject to any proceeding by reason thereof. And if any person shall not have delivered a statement or schedule within the time limited by the Commissioners, he or she may deliver one at any time before proceedings commence to recover the penalty, to prevent the same ; and if commenced before the Commissioners for recovering such penalty, they may, on due proof to their satisfaction that no fraud or evasion was intended, stay such proceedings, with or without costs as they think fit ; and if commenced in any Court, the Commissioners may certify that in their judgment no fraud or evasion was intended, and the judge may, on a summary application, stay such proceedings in the same

manner. Or if the party shall have delivered an imperfect statement or schedule and shall give to the Commissioners a sufficient reason why a perfect one cannot be delivered, the Commissioners, being satisfied therewith, shall give further time for the delivery thereof ; and such party shall not be liable to any penalty for the want thereof, in case he or she shall have delivered as perfect a one as from the nature of the case could be done, and so from time to time, as long as the Commissioners shall grant further time as aforesaid.

Commissioners may summon witnesses as well parties, and examine them on oath respecting any assessment ; which oath is to be signed by the Deponent.

The duty shall not be levied on any Houses which shall have been or shall become unoccupied for the year of assessment, or for such portion thereof as the same shall be unoccupied; but the assessment thereupon, for the whole or such part of the year, shall upon appeal be discharged or diminished by the Commissioners, on due proof of the time in which such house has remained unoccupied.

If any person shall find himself aggrieved by the continuance for the second year of the first year's assessment on Lands or Tenements, by occasion of his being over-rated therein, he may appeal from the same in such second year, on delivering *ten* days' Notice of such his intention, to the Surveyor or Inspector, and a true and perfect Schedule of the annual value of the property charged on him for that year, in like manner as he might have appealed against the same assessment under the like circumstances for the first year ; and no payment on such assessment for the first year shall pre-

clude such appeal. But for any vexatious appeal without reasonable cause, it is lawful for the Commissioners to award reasonable costs for the attendance of the Assessor, Surveyor, or Inspector, to be added to the assessment, and levied therewith, for the use of such Assessor, Surveyor, or Inspector; and which shall be paid to him in like manner as any other payments to them under the property act.

Where any party appeals as overcharged or overrated by any charge or certificate of objection of any Surveyor or Inspector, or by any assessment made in pursuance thereof, he or she, upon the hearing in all cases where a list, statement, account, or estimate in writing, ought to have been delivered by the Appellant to the Assessor, shall produce or cause to be produced before the Commissioners a true List, &c. as the case may require, to the best of his or her judgment and belief, with a Declaration in writing thereunto annexed [*or subjoined*] stating "that such list, statement, account, or estimate, (*as it may be*) contains all matters and things required of the Appellant to be returned by him or her, for which he or she is chargeable by virtue of any act or acts, to the best of his or her judgment and belief;" which return and declaration must be respectively signed by the Appellant in his or her proper name and hand-writing. And in default of the production of such List, &c. by or on behalf of the Appellant, with such Declaration attached, the Commissioners shall confirm the charge or objection against which such appeal was made.

Upon every charge allowed or confirmed by the Commissioners, in the whole or in part, upon which any increase of duty shall be made, the assessment thereupon shall be made in double the

amount of duty which shall have been charged in the supplementary assessment on occasion of such charge, unless where the same is otherwise provided for, as follows : —

Where an amended return, with a declaration thereto, shall not be delivered to the Surveyor or Inspector; and where no list, statement, account, or estimate, with such declaration annexed as aforesaid, shall be produced to the Commissioners on the hearing of the appeal, it is not lawful for the Commissioners to make any abatement, defalcation, or remission of the double duty, or any part thereof; but the same shall stand good, and remain part of the annual assessment, unless the party charged shall have given Notice of consent to the charge of the Surveyor or Inspector, unless the Commissioners shall be of opinion that the Surveyor or Inspector was enabled to correct or amend the first assessment of duty for that year, according to the directions of the act [*set forth in the last preceding chapter of this book*] by means of or by reference to the original return of the party charged; in which cases it is lawful for the Commissioners who shall have confirmed such charge, at the same time to remit and strike off the whole of the double duty.

Upon every charge confirmed upon appeal, if the Commissioners shall after examination of the Appellant, or by other lawful evidence produced on his or her behalf, be of opinion that the alleged default, neglect, omission, or claim of exemption, allowance or deduction, hath been duly accounted for, and that the cause or causes have been truly stated in any amended return and annexed declaration, and that the Appellant had a just or reasonable cause of controverting the charge, and that such default, &c. was not wilfully made and with intention to defraud the revenue, it is lawful for the Commissioners who shall have determined

